



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, वीरवार 15 मार्च, 2012/25 फाल्गुन, 1933

हिमाचल प्रदेश सरकार

स्वास्थ्य एवं परिवार कल्याण विभाग

अधिसूचना

शिमला-171002, 10 अगस्त, 2011

संख्या स्वास्थ्य-ए-ए(3)-5/2010.—हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, हिमाचल प्रदेश स्वास्थ्य एवं परिवार कल्याण विभाग में पुरुष बहुउद्देशीय स्वास्थ्य कार्यकर्ता, वर्ग-III (अराजपत्रित) के पद के लिए इस अधिसूचना से संलग्न उपाबन्ध-“क” के अनुसार भर्ती और प्रोन्नति नियम बनाती हैं, अर्थात् :-

1. **संक्षिप्त नाम और प्रारम्भ.**—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश स्वास्थ्य एवं परिवार कल्याण विभाग पुरुष बहुउद्देशीय स्वास्थ्य कार्यकर्ता, वर्ग-III (अराजपत्रित) भर्ती और प्रोन्नति नियम, 2011 है।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

2. निरसन और व्यावृत्तियाँ.—(1) इस विभाग की अधिसूचना संख्या स्वास्थ्य-ए-ए (3)- 14/97, दिनांक 21-10-1998 द्वारा अधिसूचित तथा समय-समय पर संशोधित, हिमाचल प्रदेश सरकार स्वास्थ्य एवं परिवार कल्याण विभाग पुरुष बहुउद्देशीय स्वास्थ्य कार्यकर्ता, वर्ग-III (अराजपत्रित) भर्ती और प्रोन्नति नियम, 1998 का एतद्वारा निरसन किया जाता है ।

(2) ऐसे निरसन के होते हुए भी उपर्युक्त उप नियम (1) के अधीन इस प्रकार निरसित नियमों के अधीन की गई कोई नियुक्ति, बात या कार्यवाई इन नियमों के अधीन विधिमान्य रूप में की गई समझी जाएगी ।

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव (स्वास्थ्य) ।

उपाबन्ध — 'क'

**स्वास्थ्य एवं परिवार कल्याण विभाग हिमाचल प्रदेश में पुरुष बहुउद्देशीय स्वास्थ्य कार्यकर्ता,
वर्ग-III अराजपत्रित के पद के लिए भर्ती और प्रोन्नति नियम**

1. पद का नाम.—पुरुष बहुउद्देशीय स्वास्थ्य कार्यकर्ता ।
2. पदों की संख्या.—2008 (दो हजार आठ) ।
3. वर्गीकरण.—वर्ग III (अराजपत्रित) ।
4. वेतनमान.—(i) नियमित पदधारियों के लिए वेतनमान:
पे बैंड ₹ 5910-20200 जमा ₹ 2800 /— ग्रेड पे ।
(ii) संविदा पर नियुक्त कर्मचारियों के लिए उपलब्धियाँ :
8710 /— प्रतिमास, स्तम्भ सखं या 15-क में दिए गए ब्यौरे के अनुसार ।
5. चयन पद अथवा अचयन पद.—अचयन ।
6. सीधी भर्ती के लिए आयु.—18 से 45 वर्ष :

परन्तु सीधे भर्ती किए जाने वाले व्यक्तियों के लिए ऊपरी आयु सीमा तदर्थ या संविदा के आधार पर नियुक्त किए गए व्यक्तियों सहित पहले से ही सरकार की सेवा में रत अभ्यर्थियों को लागू नहीं होगी :

परन्तु यह और कि यदि तदर्थ या संविदा के आधार पर नियुक्त किया गया अभ्यर्थी इस रूप में नियुक्ति की तारीख को अधिक आयु का हो गया हो, तो वह तदर्थ या संविदा के आधार पर नियुक्ति के कारण विहित आयु में छूट के लिए पात्र नहीं होगा :

परन्तु यह आरै कि अनुसूचित जातियों/अनुसूचित जनजातियों/अन्य वर्गों के व्यक्तियों के लिए उपरी आयु सीमा में उतनी ही छूट दी जा सकेगी, जितनी हिमाचल प्रदेश सरकार के साधारण या विशेष आदेशों के अधीन अनुज्ञेय है:

परन्तु यह और कि पब्लिक सैक्टर, निगमों तथा स्वायत्त निकायों के सभी कर्मचारियों को, जो ऐसे पब्लिक सैक्टर निगमों तथा स्वायत्त निकायों के प्रारम्भिक गठन के समय ऐसे पब्लिक सैक्टर निगमों/स्वायत्त निकायों से पूर्व सरकारी कर्मचारी थे, सीधी भर्ती में आयु सीमा में ऐसी ही रियायत दी जाएगी, जैसी सरकारी कर्मचारियों को अनुज्ञेय है, किन्तु इस प्रकार की रियायत पब्लिक सैक्टर निगमों तथा स्वायत्त निकायों के ऐसे

कर्मचारीवृन्द को अनुज्ञेय नहीं होगी जो पश्चातवर्ती ऐसे निगमों/स्वायत्त निकायों द्वारा नियुक्त किए गए थे/किए गए हैं और उन पब्लिक सैक्टर निगमों/स्वायत्त निकायों के प्रारम्भिक गठन के पश्चात् निगमों/स्वायत्त निकायों की सेवा में अन्तिम रूप से आमेलित किए गए हैं/कए गए थे।

1. सीधी भर्ती के लिए आयु सीमा की गणना, उस वर्ष के प्रथम दिवस से की जाएगी जिसमें पद (पदों) को, आवेदन आमंत्रित करने के लिए यथास्थिति विज्ञापित किया गया है या नियोजनालयों को अधिसूचित किया गया है।
2. अन्यथा सुअर्हित अभ्यर्थियों की दशा में सीधी भर्ती के लिए आयु सीमा और अनुभव हिमाचल प्रदेश लोक सेवा आयोग के विवेकानुसार शिथिल किया जा सकेगा।

7. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताएं : (1) अनिवार्य अर्हता.—(i) किसी मान्यता प्राप्त स्कूल शिक्षा बोर्ड/संस्थान से जमा दो या इसके समतुल्य होना चाहिए।

(ii) राज्य सरकार द्वारा मान्यता प्राप्त प्रशिक्षण संस्थान से बहुउद्देशीय स्वास्थ्य कार्यकर्ता (पुरुष) का डेढ़ वर्ष की अवधि का प्रशिक्षण प्रमाणपत्र।

(2) वांछनीय अर्हता.—हिमाचल प्रदेश की रुढ़ियों, रीतियों और बोलियों का ज्ञान और प्रदेश में विद्यमान विशिष्ट दशाओं में नियुक्ति के लिए उपयुक्तता।

8. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए विहित आयु और शैक्षिक अर्हताएं: प्रोन्नत व्यक्तियों की दशा में लागू होंगी या नहीं.—(क) आयु : लागू नहीं।
(ख) शैक्षिक अर्हता : लागू नहीं।

9. परीक्षा की अवधि, यदि कोई हो.—दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में और लिखित कारणों से आदेश दे।

10. भर्ती की पद्धति—भर्ती सीधी होगी या प्रोन्नति प्रतिनियुक्ति स्थानान्तरण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाली पदों की प्रतिशतता.—शतप्रतिशत सीधी भर्ती द्वारा नियमित आधार पर या संविदा के आधार पर भर्ती द्वारा। संविदा पर नियुक्त कर्मचारी स्तम्भ संख्या—15—क में दी गई उपलब्धियां प्राप्त करेंगे और उक्त स्तम्भ में विनिर्दिष्ट सेवा शर्तों द्वारा विनियमित होंगे।

11. प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण की दशा में श्रेणियां (ग्रेड) जिनसे प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण किया जाएगा.—लागू नहीं।

12. यदि विभागीय प्रोन्नति समिति विद्यमान हो तो, उसकी संरचना.—लागू नहीं।

13. भर्ती करने में, जिन परिस्थितियों में हिमाचल प्रदेश, लोक सेवा आयोग से परामर्श किया जाएगा.—जैसा विधि द्वारा अपेक्षित हो।

14. सीधी भर्ती के लिए अनिवार्य अपेक्षा.—किसी सेवा या पद पर नियुक्ति के लिए अभ्यर्थी का भारत का नागरिक होना अनिवार्य है।

15. सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन.—सीधी भर्ती के मामले में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा। यदि, यथास्थिति, हिमाचल प्रदेश लोक सेवा आयोग या अन्य भर्ती प्राधिकरण ऐसा करना आवश्यक या समीचीन समझे, तो लिखित परीक्षा या व्यावहारिक परीक्षा के आधार पर किया जाएगा जिसका स्तर/पाठ्यक्रम, इत्यादि, यथास्थिति, आयोग/अन्य भर्ती प्राधिकरण द्वारा अवधारित किया जाएगा।

15-क संविदा नियुक्ति द्वारा पद पर नियुक्ति के लिए चयन.—इन नियमों में किसी बात के होते हुए भी पद पर संविदा नियुक्तियाँ नीचे दिए गए निबन्धनों और शर्तों के अधीन की जाएंगी :—

(I) संकल्पना.—(क) इस पालिसी के अधीन स्वास्थ्य विभाग में पुरुष बहुउद्देशीय स्वास्थ्य कार्यकर्ता को संविदा के आधार पर प्रारम्भ में एक वर्ष के लिए लगाया जाएगा । जिसे वर्षानुवर्ष आधार पर बढ़ाया जा सकेगा :

परन्तु वर्षानुवर्ष आधार पर संविदा की अवधि में विस्तारण/नवीकरण के लिए संबद्ध विभागाध्यक्ष यह प्रमाण—पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और आचरण, वर्ष के दौरान संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि को विस्तारित/नवीकृत किया जाएगा ।

(ख) पद का हिमाचल प्रदेश अधीनस्थ सेवाएं चयन बोर्ड के कार्यक्षेत्र से बाहर होना.—निदेशक, स्वास्थ्य सेवाएं रिक्त पदों को संविदा के आधार पर भरने के लिए सरकार का अनुमोदन प्राप्त करने के पश्चात् रिक्त पदों के ब्यौरे को कम से कम दो अग्रणी समाचार पत्रों में विज्ञापित करवाएगा और विहित अर्हता रखने वाले और अन्य पात्रता शर्तों को पूर्ण करने वाले अभ्यर्थियों से आवेदन आमंत्रित करेगा ।

(ग) चयन, इन नियमों में विहित पात्रता शर्तों के अनुसार किया जाएगा ।

(II) संविदात्मक उपलब्धियां.—संविदा आधार पर नियुक्त पुरुष बहुउद्देशीय स्वास्थ्य कार्यकर्ता को ₹ 8710/— की समेकित नियत संविदात्मक रकम (जो पे बैण्ड के न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी । यदि संविदा में एक वर्ष से अधिक की बढ़ोतरी की जाती है, तो पश्चात्वर्ती वर्ष/वर्षों के लिए संविदात्मक उपलब्धियों में 260/— रुपए की रकम (पद के पे बैण्ड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) वार्षिक वृद्धि के रूप में अनुज्ञात की जाएगी ।

(III) नियुक्ति/अनुशासन प्राधिकारी.—निदेशक, स्वास्थ्य सेवाएं, हिमाचल प्रदेश सरकार, नियुक्ति और अनुशासन प्राधिकारी होगा ।

(IV) चयन प्रक्रिया.—संविदा नियुक्ति की दशा में पद पर नियुक्ति के लिए चयन, मौखिक परीक्षा के आधार पर किया जाएगा या यदि आवश्यक या समीचीन समझा जाए तो लिखित परीक्षा या व्यावहारिक परीक्षा द्वारा किया जाएगा, जिसका स्तर/पाठ्यक्रम आदि सम्बद्ध भर्ती प्राधिकारी द्वारा अवधारित किया जाएगा ।

(V) संविदात्मक नियुक्तियों के लिए चयन समिति.—जैसी सम्बद्ध भर्ती प्राधिकारी द्वारा समय-समय पर गठित की जाए ।

(VI) करार.—अभ्यर्थी को चयन के पश्चात् इन नियमों से संलग्न उपाबन्ध—'ख' के अनुसार करार हस्ताक्षरित करना होगा ।

(VII) निबन्धन और शर्तें.—(क) संविदात्मक नियुक्त व्यक्ति को 8710/— रुपए की नियत संविदात्मक रकम (जो पे बैण्ड के न्यूनतम जमा ग्रेड पे के बराबर होगी) प्रतिमास संदत्त की जाएगी । संविदा पर नियुक्त व्यक्ति आगे बढ़ाए गए वर्षों के लिए संविदात्मक रकम में 260/— रुपए की रकम (पद के पे बैण्ड के न्यूनतम जमा ग्रेड पे का तीन प्रतिशत) की वृद्धि का हकदार होगा और अन्य कोई सहबद्ध प्रसुविधाएं जैसे वरिष्ठ/चयन वेतनमान आदि नहीं दिया जाएगा ।

(ख) संविदा पर नियुक्त व्यक्ति की सेवा पूर्णतया अस्थाई आधार पर होगी । यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है, तो नियुक्ति समाप्त किए जाने के लिए दायी होगी ।

(ग) संविदात्मक नियुक्त व्यक्ति एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा । यह अवकाश एक वर्ष तक संचित किया जा सकेगा । संविदा पर नियुक्त व्यक्ति को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा । वह चिकित्सा प्रतिपूर्ति आरै एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी । केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा ।

(घ) नियन्त्रक अधिकारी के अनुमोदन के बिना सेवा से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान (समापन) हो जाएगा। संविदा पर नियुक्त व्यक्ति कर्तव्य (ड्यूटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा।

(ङ.) संविदा आधार नियुक्त कर्मचारी, जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानांतरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।

(च) चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण पत्र प्रस्तुत करना होगा। बारह सप्ताह से अधिक की गर्भवती महिला अभ्यर्थी प्रसव होने तक, अस्थायी तौर पर अनुपयुक्त बनी रहेगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाएगा।

(छ) संविदा पर नियुक्त व्यक्ति का यदि अपने पदीय कर्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो तो वह उसी दर पर, जैसी नियमित कर्मचारियों को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।

(ज) नियमित कर्मचारियों की दशा में यथा लागू सेवा नियमों के उपबन्ध जैसे एफ0आर0-एस0आर0, छुट्टी नियम, साधारण भविष्य निधि नियम, पेंशन नियम तथा आचरण नियम आदि संविदा पर नियुक्त व्यक्तियों की दशा में लागू नहीं होंगे। वे इस स्तम्भ में यथावर्णित उपलब्धियों आदि के लिए हकदार होंगे।

16. आरक्षण.—सेवा में नियुक्ति, हिमाचल प्रदेश सरकार द्वारा, समय समय पर अनुसूचित जातियों/अनुसूचित जन जातियों/अन्य पिछड़े वर्गों और अन्य प्रवर्गों के व्यक्तियों के लिए सेवाओं में आरक्षण की बाबत जारी किए गए आदेशों के अधीन होगी।

17. विभागीय परीक्षा.—लागू नहीं।

18. शिथिल करने की शक्ति.—जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समीचीन है, वहां वह कारणों को लिखित में अभिलिखित करके और हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, आदेश द्वारा, इन नियमों के किन्हीं उपबन्धों को किसी वर्ग या व्यक्तियों के प्रवर्ग या पदों की बाबत शिथिल कर सकेगी।

उपाबन्ध—“ख”

(पद का नाम).....और हिमाचल प्रदेश सरकार के मध्य निदेशक, स्वास्थ्य एवं परिवार कल्याण विभाग के माध्यम से निष्पादित की जाने वाले संविदा/करार का प्रारूप

यह करार श्री/श्रीमति..... पुत्र/पुत्री श्री..... निवासी....., संविदा पर नियुक्त व्यक्ति (जिसे इसमें इसके पश्चात् “प्रथम पक्षकार” कहा गया है), और हिमाचल प्रदेश की राज्यपाल के मध्य, निदेशक, स्वास्थ्य एवं परिवार कल्याण (जिसे इसमें इसके पश्चात् “द्वितीय पक्षकार” कहा गया है) के माध्यम से आज तारीख.....को किया गया।

“द्वितीय पक्षकार” ने उपरावे त प्रथम पक्षकार को लगाया है और प्रथम पक्षकार ने.....(पद का नाम) के रूप में संविदा आधार पर निम्नलिखित निबन्धन और शर्तों पर सेवा करने के लिए सहमति दी है:—

1. यह कि प्रथम पक्षकार ने.....(पद का नाम) के रूप में.....से प्रारम्भ होने और..... को समाप्त होने वाले दिन तक एक वर्ष की अवधि के लिए द्वितीय पक्षकार की सेवा में रहेगा। यह विनिर्दिष्ट रूप से उल्लिखित किया गया है और दोनों पक्षकारों द्वारा करार पाया गया है कि प्रथम पक्षकार की द्वितीय पक्षकार के साथ संविदा, आखिरी कार्य दिवस को अर्थात्.....दिन को स्वयंमेव ही पर्यवसित (समाप्त) हो जाएगी तथा सूचना नोटिस आवश्यक नहीं होगा:

परन्तु वर्षानुवर्ष के आधार पर संविदा की अवधि में विस्तारण/नवीकरण के लिए सम्बद्ध विभागाध्यक्ष यह प्रमाण-पत्र जारी करेगा कि संविदा पर नियुक्त व्यक्ति की सेवा और आचरण वर्ष के दौरान संतोषजनक रहा है और केवल तभी उसकी संविदा की अवधि को नवीकृत/विस्तारित किया जाएगा।

2. प्रथम पक्षकार की संविदात्मक रकम रूपए प्रतिमास होगी।
3. प्रथम पक्षकार की सेवा पूर्णतया अस्थाई आधार पर होगी। यदि संविदा पर नियुक्त व्यक्ति का कार्य/आचरण ठीक नहीं पाया जाता है या यदि नियमित पदधारी उस व्यक्ति के विरुद्ध नियुक्त/तैनात कर दिया जाता है, जिसके लिए प्रथम पक्षकार को संविदा पर लगाया गया है तो नियुक्ति पर्यवसित (समाप्त) किए जाने के लिए दायी होगी।
4. संविदात्मक नियुक्त(पद का नाम) एक मास की सेवा पूरी करने के पश्चात् एक दिन के आकस्मिक अवकाश का हकदार होगा। यह अवकाश एक वर्ष तक संचित किया जा सकेगा। संविदात्मक नियुक्त(पद का नाम) को किसी भी प्रकार का अन्य कोई अवकाश अनुज्ञात नहीं होगा। वह चिकित्सा प्रतिपूर्ति और एल0टी0सी0 इत्यादि के लिए भी हकदार नहीं होगा/होगी। केवल प्रसूति अवकाश, नियमानुसार दिया जाएगा।
5. नियन्त्रक अधिकारी के अनुमोदन के बिना कर्त्तव्यों से अनधिकृत अनुपस्थिति से स्वतः ही संविदा का पर्यावसान (समापन) हो जाएगा। संविदात्मक नियुक्त.....(पद का नाम) कर्त्तव्य (ड्यूटी) से अनुपस्थिति की अवधि के लिए संविदात्मक रकम का हकदार नहीं होगा।
6. संविदा आधार नियुक्त कर्मचारी, जिसने तैनाती के एक स्थान पर पांच वर्ष का कार्यकाल पूर्ण कर लिया है, आवश्यकता के आधार पर स्थानान्तरण हेतु पात्र होगा, जहां भी प्रशासनिक आधार पर ऐसा करना अपेक्षित हो।
7. चयनित अभ्यर्थी को सरकारी/रजिस्ट्रीकृत चिकित्सा व्यवसायी से अपना आरोग्य प्रमाण-पत्र प्रस्तुत करना होगा। महिला अभ्यर्थियों की दशा में, बारह सप्ताह से अधिक की गर्भावस्था प्रसव होने तक, उसे अस्थाई तौर पर अनुपयुक्त बना देगी। महिला अभ्यर्थियों का किसी प्राधिकृत चिकित्सा अधिकारी/व्यवसायी द्वारा उपयुक्तता के लिए पुनः परीक्षण किया जाना चाहिए।
8. संविदा पर नियुक्त व्यक्ति का, यदि अपने पदीय कर्त्तव्यों के सम्बन्ध में दौरे पर जाना अपेक्षित हो, तो वह उसी दर पर, जैसी नियमित प्रतिस्थानी कर्मचारी को वेतनमान के न्यूनतम पर लागू है, यात्रा भत्ते/दैनिक भत्ते का हकदार होगा/होगी।

9. संविदात्मक नियुक्त व्यक्ति(यों) को कर्मचारी सामूहिक बीमा योजना के साथ-साथ इ0पी0एफ0/जी0पी0एफ0 भी लागू नहीं होगा।

इसके साक्ष्यस्वरूप प्रथम पक्षकार और द्वितीय पक्षकार ने साक्षियों की उपस्थिति में इसमें सर्वप्रथम उल्लिखित तारीख को अपने-अपने हस्ताक्षर कर दिए हैं।

साक्षियों की उपस्थिति में :

1.....

.....

(नाम व पूरा पता)

2.....

.....

(नाम व पूरा पता)

(प्रथम पक्षकार के हस्ताक्षर)

साक्षियों की उपस्थिति में :

1.....

.....

(नाम व पूरा पता)

2.....

.....

(नाम व पूरा पता)

(द्वितीय पक्षकार के हस्ताक्षर)

[AUTHORITATIVE ENGLISH TEXT OF THIS DEPARTMENT NOTIFICATION NO. HEALTH-A-A(3)-10/2010, DATED 10-8-2011 AS REQUIRED UNDER CLAUSE (3) OF ARTICLE 348 OF THE CONSTITUTION OF INDIA]

HEALTH & FAMILY WELFARE DEPARTMENT

NOTIFICATION

Shimla-2, the 10th August, 2011

No. Health-A-A(3) -10/2010.—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh Public Service Commission, is pleased to make the Recruitment & Promotion Rules for the post of Male Multipurpose Health Worker, Class III (Non-Gazetted), in the Department of Health & Family Welfare, Himachal Pradesh as per Annexure-A attached to this notification, namely: -

1. Short title and commencement.—(1) These Rules may be called the Himachal Pradesh, Department of Health & Family Welfare, Male Multipurpose Health Worker, Class III (Non-Gazetted), Recruitment and Promotion, Rules, 2011.

(2) These Rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Repeal & Savings.— (1) The Himachal Pradesh, Department of Health & Family Welfare, Male Multipurpose Health Worker, Class III (Non-Gazetted) Recruitment & Promotion Rules, 1998 notified vide this Department notification No.Health-A-A(3)-1/97 dated 21-10-1998 and amended from time to time are hereby repealed.

(2) Notwithstanding such repeal, any appointment made or any thing done or any action taken under the Rules, so repealed under sub-rule (1) supra shall be deemed to have been validly made or done or taken under these Rules.

By order,
Sd/-
Principal Secretary (Health).

ANNEXURE-“A”

**RECRUITMENT AND PROMOTION RULES FOR THE POST OF MALE
MULTIPURPOSE HEALTH WORKER (NON-GAZETTED) CLASS-III, IN THE
HEALTH & FAMILY WELFARE DEPARTMENT, HIMACHAL PRADESH**

1. **Name of the posts.**—Male Multipurpose Health Worker.
2. **Number of posts .**—2008 (Two thousand and eight).
3. **Classification.**— Class-III (Non-Gazetted).
4. **Pay Scale.**— (i) Scale of Pay for regular incumbents:
Pay Band Rs.5910-20200+Rs 2800 Grade Pay
(ii) Emoluments for contract employees Rs.8710- P.M. as per details given in Col.No.15-A
5. **Whether Selection Post or Non-Selection Post.**—Non-Selection.
6. **Age for direct Recruitment .**—Between 18 to 45.

Provided that the upper age limit for direct recruits will not be applicable to the candidates already in service of the Government including those who have been appointed on adhoc or on contract basis;

Provided further that if a candidate appointed on adhoc basis had become overage on the date when he was appointed as such he shall not be eligible for any relaxation in the prescribed age limit by virtue of his such adhoc or contract appointment ;

Provided further that upper age limit is relaxable for Scheduled Castes/Scheduled Tribes/ other categories of persons to the extent permissible under the general or special order(s) of the Himachal Pradesh Government;

Provided further that the employees of all the Public Sector Corporations and Autonomous Bodies who happened to be Government Servants before absorption in Public Sector Corporations/Autonomous Bodies at the time of initial constitutions/of such Corporations/Autonomous Bodies shall be allowed age concession in direct recruitment as admissible to Government servants. This concession will not, however, be admissible to such staff of the Public

Sector Corporations/Autonomous Bodies who were/are subsequently appointed by such Corporation/Autonomous Bodies and who are/were finally absorbed in the service of such Corporations/Autonomous Bodies after initial constitution of the Public Sector Corporations/Autonomous Bodies;

- (1) Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is/are advertised for inviting applications or notified to the Employment Exchanges or as the case may be.
- (2) Age and experience in the case of direct recruitment relaxable at the discretion of the Himachal Public Service Commission in case the candidate is otherwise well qualified.

7. Minimum Educational and other qualification required for direct recruits.—(a) Essential Qualification.—(i) Should be a 10+2 or its equivalent from a recognized Board of School Education/Institution

(ii) Should possess one and half year Training Certificate as MPW(Male) from a recognized Institution of the State Government.

(b) DESIRABLE QUALIFICATIONS.—Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.

8. Whether age and educational qualification prescribed for direct recruits will apply in the case of the promotees.—(i) *Age* : Not applicable.
(ii) *Educational Qualification* : Not applicable.

9. Period of probation, if any .—Two Years subject to such further extension for a period not exceeding one year as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.

10. Method of recruitment.-Whether by direct recruitment or by promotion, deputation, transfer and the percentage of posts to be filled-in by various methods.—100% by direct recruitment on regular basis or recruitment on contract basis. The contract employees will get emoluments as given in Col. 15-A and will be governed by service conditions as specified in the said column.

11. In case of recruitment by promotion, deputation, transfer, grade from which promotion/ deputation/ transfer is to be made.—Not Applicable.

12. If a Departmental Promotion Committee exists, what is its composition—Non Applicable.

13. Circumstances under which the HP Public Service Commission is to be consulted in making recruitment.—As required under the law.

14. Essential requirement for direct recruitment.—A candidate for appointment to any service or post must be a citizen of India.

15. Selection for appointment to post by direct recruitment.—Selection for appointment to the post in the case of direct recruitment shall be made on the basis of viva-voce test

if the Himachal Pradesh Public Service Commission or other recruiting authority as the case may be, so consider necessary or expedient by a written test or practical test, the standard/syllabus etc. or which will be determined by the Commission OR other recruiting authority as the case may be.

15-A Selection for appointment to the post by contract appointment.—Notwithstanding anything contained in these rules, contract appointments to the post will be made subject to the terms and conditions given below :-

(I) Concept.—(a) Under this policy, the Male Multipurpose Health Worker in the Health department will be engaged on contract basis initially for one year, which may be extendable on year to year -basis.

Provided that for extension/ renewal of contract period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then his period of contract is to be extended /renewed.

(b) POST FALLS OUT OF THE PURVIEW OF HP PSC/ HP SSSB.—The Director of Health Services after obtaining the approval of the Govt. to fill up the vacant posts on contract basis will advertise the details of post in at least two leading newspapers and invite applications from the candidates having the prescribed qualifications and fulfill the other eligible conditions.

(c) The Selection will be made in accordance with the eligibility conditions prescribed in these Rules.

(II) CONTRACTUAL EMOLUMENTS.—The Male Multipurpose Health Worker appointed on contract basis will be paid consolidated contractual amount @ Rs.8710- P.M. (which shall be equal to minimum of the pay band +Grade pay). An amount of Rs.260 /- (3% of the minimum pay band+grade pay of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

(III) Appointing /Disciplinary authority.—Director of Health Services will be appointing and disciplinary authority.

(VI) Selection process.—Selection for appointment to the post in the case of Contract Appointment will be made on the basis of viva-voce test or if consider necessary or expedient by a written test or practical test the standard/syllabus etc. of which will be determined by the concerned recruiting authority.

(V) COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS :-
As may be constituted by the concerned recruiting authority.

(VI) Agreement.—After selection of a candidate he/she shall sign an agreement as per **Annexure-B** appended to these Rules.

(VII) Terms and Condition.—(a) The contractual appointee will be paid fixed contractual amount @ 8710/- per month (which shall be equal to minimum of the pay band + grade pay). The contract appointee will be entitled for increase in contractual amount @ Rs.260/- (3% of minimum of the pay band+grade pay of the post) for further extended years and no other allied benefits such as senior/ selection scales etc. will be given.

(b) The service of the Contract appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory.

(c) Contractual appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated upto one year. No leave of any other kind is admissible to the contract appointee. He/she will not be entitled for Medical Reimbursement and LTC etc., only maternity leave will be given as per Rules.

(d) Unauthorized absence from the duty without the approval of the controlling Officers shall automatically lead to the termination of the contract. Contract appointee shall not be entitled for contractual amount for the period of absence from duty.

(e) An official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds .

(f) Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner. The women candidate pregnant beyond twelve weeks will stand temporarily unfit till the confinement is over. The women candidate will be re-examined for the fitness from an authorized medical officer/ practitioner.

(g) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular official at the minimum of pay scale.

(h) Provisions of service rules like FR SR, Leave Rules, GPF Rules, Pension Rules & Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointee. They will be entitled for emoluments etc. as detailed in this Column.

16. Reservation .—The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled Caste/Scheduled Tribes/ Other Backwards Classes/other categories of persons issued by the Himachal Pradesh Government from time to time.

17. Departmental Examination.—Not Applicable.

18. Power to Relax.—Where the State Government is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with the H.P. Public Service Commission, relax any of the provisions of these Rules with respect to any class or category of persons or posts.

Annexure-B

Form of contract/agreement to be executed between the -----& the Government of Himachal Pradesh through Director, Health & Family Welfare Department

This agreement is made on this.....day of...in the year.....Between Sh/SmtS/o/D/oShri.....R/o.....,contract appointee (hereinafter called the FIRST PARTY), AND The Governor, Himachal Pradesh through Director, Health & Family Welfare Department, Himachal Pradesh (here-in-after called the SECOND PARTY).

Whereas, the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a..... (name of post) on contract basis on the following terms & conditions:-

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a (Name of the post) for a period of one year commencing on day of.....and ending on the day of..... It is specifically mentioned and agreed upon by both the parties that the contract of the.....FIRST PARTY with SECOND PARTY shall ipso-facto stand terminated on the last working day i.e. on And information notice shall not be necessary:

Provided that for extension/renewal of contract period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee was satisfactory during the year and only then his period of contract is to be renewed/extended.

2. The contractual amount of the FIRST PARTY will be Rs...../- per month.
3. The service of FIRST PARTY will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good or if a regular incumbent is appointed/posted against the vacancy for which the first party was engaged on contract.
4. Contractual..... (name of the post) will be entitled for one day casual leave after putting in one month service. This leave can be accumulated upto one year. No leave of any kind is admissible to the contractual..... (name of the post) He will not be entitled for Medical Reimbursement and LTC etc. Only maternity leave will be given as per Rules.
5. Unauthorized absence from the duty without the approval of the controlling officer shall automatically lead to the termination of the contract. A contractual..... (name of the post) will not be entitled for contractual amount for the period of absence from duty.
6. An official appointed on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds .
7. Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner. In case of women candidates pregnant beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer/ practitioner.
8. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his official duties at the same rate as applicable to regular counter-part official at the minimum of the pay scale.

9. The Employees Group Insurance Scheme as well as EPF/GPF will not be applicable to the contractual appointee (s).

IN WITNESS the FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESS:

1.....

.....

.....

(Name and Full Address)

(Signature of the FIRSTPARTY).

2.

.....

.....

(Name and Full Address)

IN THE PRESENCE OF WITNESS:

1.....

.....

.....

(Name and Full Address)

(Signature of the SECONDPARTY).

2.

.....

.....

(Name and Full Address)

स्वास्थ्य एवं परिवार कल्याण विभाग

अधिसूचना

तारीख शिमला-171002, 28 मई, 2009

संख्या स्वास्थ्य-ए-ए(3)-1/2007.—हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से, हिमाचल प्रदेश स्वास्थ्य एवं परिवार कल्याण विभाग में वरिष्ठ रेडियोग्राफर, वर्ग—III (अराजपत्रित) के पद के लिए इस अधिसूचना से संलग्न उपाबन्ध “क” के अनुसार भर्ती आरै प्रोन्नति नियम बनाती हैं, अर्थात् :-

1. **संक्षिप्त नाम और प्रारम्भ.**—(1) इन नियमों का संक्षिप्त नाम, हिमाचल प्रदेश, स्वास्थ्य एवं परिवार कल्याण विभाग वरिष्ठ रेडियोग्राफर, वर्ग—III (अराजपत्रित) भर्ती और प्रोन्नति नियम, 2009 है।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशन की तारीख से प्रवृत्त होंगे।

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव (स्वास्थ्य)।

**हिमाचल प्रदेश, स्वास्थ्य एवं परिवार कल्याण विभाग में वरिष्ठ रेडियोग्राफर, वर्ग—III (अराजपत्रित)
के पद के लिए भर्ती और प्रोन्नति नियम**

1. पद का नाम.—वरिष्ठ रेडियोग्राफर ।
2. पदों की संख्या.—40 (चालीस) ।
3. वर्गीकरण.— वर्ग—III (अराजपत्रित) (अलिपिक वर्गीय)।
4. वेतनमान.—5480—160—5800—200—7000—220—8100—275—8925 रुपए ।
5. चयन पद अथवा अचयन पद.—अचयन पद ।
6. सीधी भर्ती के लिए आयु.—लागू नहीं ।
7. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए अपेक्षित न्यूनतम शैक्षिक और अन्य अर्हताएं.—लागू नहीं ।
8. सीधे भर्ती किए जाने वाले व्यक्तियों के लिए विहित आयु और शैक्षिक अर्हताएं :प्रोन्नति की दशा में लागू होगी या नहीं.—आयु : लागू नहीं । शैक्षिक अर्हता : लागू नहीं ।
9. परिवीक्षा की अवधि, यदि कोई हो.—दो वर्ष, जिसका एक वर्ष से अनधिक ऐसी और अवधि के लिए विस्तार किया जा सकेगा जैसा सक्षम प्राधिकारी विशेष परिस्थितियों में और लिखित कारणों से आदेश दे ।
10. भर्ती की पद्धति : भर्ती, सीधी होगी या प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण द्वारा और विभिन्न पद्धतियों द्वारा भरे जाने वाले पदों की प्रतिशतता.—: शतप्रतिशत प्रोन्नति द्वारा ।
11. प्रोन्नति, प्रतिनियुक्ति, स्थानान्तरण की दशा में श्रेणिया (ग्रेड) जिनसे प्रोन्नति प्रतिनियुक्ति, स्थानान्तरण किया जाएगा.—: रेडियोग्राफरों में से प्रोन्नति द्वारा, जिनका पांच वर्ष का नियमित सेवाकाल या ग्रेड में की गई लगातार तदर्थ सेवा, यदि कोई हो, को सम्मिलित करके पांच वर्ष का नियमित सेवाकाल हो ।

परन्तु प्रोन्नति के प्रयोजन के लिए प्रत्येक कर्मचारी को, जनजातीय/दुर्गम क्षेत्रों में पद (पदों) की ऐसे क्षेत्रों में पर्याप्त संख्या की उपलब्धता के अध्वधीन, कम से कम एक कार्यकाल तक सेवा करनी होगी :

परन्तु यह और कि उपर्युक्त परन्तुक (1) उन कर्मचारियों के मामले में लागू नहीं होगा जिनकी अधिवर्षिता के लिए पांच वर्ष या उससे कम की सेवा शेष रही हों :

परन्तु यह और भी कि उन अधिकारियों/कर्मचारियों को, जिन्होंने जनजातीय/दुर्गम क्षेत्र में कम से कम एक कार्यकाल तक सेवा नहीं की है, ऐसे क्षेत्र में उसके अपने संवर्ग (काडर) में सर्वथा वरिष्ठता के अनुसार स्थानान्तरण किया जाएगा ।

स्पष्टीकरण I.—उपर्युक्त परन्तुक के प्रयोजन के लिए जनजातीय/दुर्गम क्षेत्रों में “कार्यकाल” से साधारणतया तीन वर्ष की अवधि या प्रशासनिक अपेक्षाओं और कर्मचारी द्वारा किए गए कार्य को ध्यान में रखते हुए ऐसे क्षेत्रों में तैनाती की इससे कम अवधि अभिप्रेत होगी ।

स्पष्टीकरण II.— उपर्युक्त परन्तुक के प्रयोजन के लिए जनजातीय/दुर्गम क्षेत्र निम्न प्रकार से होंगे :—

1. जिला लाहौल एवं स्पिति ।
2. चम्बा जिला का पांगी और भरमौर उप मण्डल ।
3. रोहडू उप मण्डल का डोडरा क्वार क्षेत्र ।
4. जिला शिमला की रामपुर तहसील का पन्द्रह बीस परगना, मुनीष दरकाली और ग्राम पंचायत काशापट ।
5. कुल्लू जिला का पन्द्रह बीस परगना ।
6. कांगड़ा जिला के बैजनाथ उप मण्डल का बडा भंगाल क्षेत्र ।
7. जिला किन्नौर ।
8. सिरमौर जिला में उप तहसील कमराउ के काठवाड़ और कोरगा पटवार वृत्त, रेणुकाजी तहसील के भलाड़-भलौना और सांगना पटवार वृत्त और शिलाई तहसील के कोटा पाब पटवार वृत्त ।
9. मण्डी जिला में करसोग तहसील का खन्गोल-बगड़ा पटवार वृत्त, बाली चौकी उप तहसील के गाडा गोसाई, मठयानी, घनयाड़, थाची, बागी, सोमगाड़ और खोलानाल, पद्धर तहसील के झारवाड़, कटुगढ़, ग्रामन, देवगढ़, ट्रैला, रोपा, कथोग, सिल्ह-भडवानी, हस्तपुर, घमरेड और भटेढ़ पटवार वृत्त, थुनांग तहसील के चियूणी, कालीपार, मानगढ़, थाच-बगड़ा, उत्तरी मगरू और दक्षिणी मगरू पटवार वृत्त और सुन्दरनगर तहसील का बटवाड़ा पटवार वृत्त ।

1. प्रोन्नति के सभी मामलों में, पद पर नियमित नियुक्ति से पूर्व सम्भरण (पोषक) पद में की गई लगातार तदर्थ सेवा, यदि कोई हो, प्रोन्नति के लिए इन नियमों में यथाविहित सेवाकाल के लिए, इस शर्त के अधीन रहते हुए गणना में ली जाएगी, कि सम्भरण प्रवर्ग में तदर्थ नियुक्ति/प्रोन्नति, भर्ती एवं प्रोन्नति नियमों के उपबन्धों के अनुसार चयन की उचित स्वीकार्य प्रक्रिया को अपनाने के पश्चात की गई थी:

परन्तु उन सभी मामलों में जिनमें कोई कनिष्ठ व्यक्ति सम्भरक पद में अपने कुल सेवाकाल (तदर्थ आधार पर की गई तदर्थ सेवा सहित, जो नियमित सेवा/नियुक्ति के अनुसरण में हों), के आधार पर उपर्युक्त निर्दिष्ट उपबन्धों के कारण विचार किए जाने का पात्र हो जाता है, वहां अपने-अपने प्रवर्ग/पद/कांडर में उससे वरिष्ठ सभी व्यक्ति विचार किए जाने के पात्र समझे जाएंगे और विचार करते समय कनिष्ठ व्यक्तियों से ऊपर रखे जाएंगे :

परन्तु यह और कि उन सभी पदधारियों की, जिन पर प्रोन्नति के लिए विचार किया जाना है, कम से कम तीन वर्ष की न्यूनतम अहर्ता सेवा या पद के भर्ती और प्रोन्नति नियमों में विहित सेवा, जो भी कम हो, होगी:

परन्तु यह और भी कि जहां कोई व्यक्ति पूर्वगामी परन्तुक की अपेक्षाओं के कारण प्रोन्नति किए जाने सम्बन्धी विचार के लिए अपात्र हो जाता है, वहां उससे कनिष्ठ व्यक्ति भी ऐसी प्रोन्नति के लिए अपात्र समझा जाएगा/समझे जाएंगे।

स्पष्टीकरण.— अन्तिम परन्तुक के अन्तर्गत कनिष्ठ पदधारी प्रोन्नति के लिए अपात्र नहीं समझा जाएगा यदि वरिष्ठ अपात्र व्यक्ति भूतपूर्व सैनिक है जिसे डिमोबिलाइज्ड आर्मड फोर्सिस परसोनल (रिजर्वेशन आफ वेकेन्सीज इन हिमाचल स्टेट नान टैक्नीकल सर्विसिज) रुल्ज, 1972 के नियम-3 के उपबन्धों के अन्तर्गत भर्ती किया गया है और इनके अन्तर्गत वरियता लाभ दिए गये हों या जिसे एक्स सर्विसमैन (रिजर्वेशन आफ वेकेन्सीज इन दी हिमाचल प्रदेश टेक्निकल सर्विसिज) रुल्ज, 1985 के नियम-3 के उपबन्धों के अन्तर्गत भर्ती किया गया हो और इनके अन्तर्गत वरियता लाभ दिए गये हो ।

2. इसी प्रकार स्थाईकरण के सभी मामलों में ऐसे पद पर नियमित नियुक्ति से पूर्व की सम्भरक पद पर की गई लगातार तदर्थ सेवा, यदि कोई हो, सेवाकाल के लिए गणना में ली जाएगी, यदि तदर्थ नियुक्ति/प्रोन्नति, उचित चयन के पश्चात् और भर्ती और प्रोन्नति नियमों के उपबन्धों के अनुसार की गई थी :

परन्तु यह कि उपर्युक्त निर्दिष्ट तदर्थ सेवा को गणना में लेने के पश्चात् जो स्थाईकरण होगा, उसके फलस्वरूप पारस्परिक वरियता अपरिवर्तित रहेगी।

12. यदि विभागीय प्रोन्नति समिति विद्यमान हो तो उसकी संरचना.—जैसी सरकार द्वारा समय-समय पर गठित की जाए।

13. भर्ती करने में जिन परिस्थितियों में हिमाचल प्रदेश लोक सेवा आयोग से परामर्श किया जाएगा.—जैसा विधि द्वारा अपेक्षित हो।

14. सीधी भर्ती के लिए अनिवार्य अपेक्षा.—: लागू नहीं।

15. सीधी भर्ती द्वारा पद पर नियुक्ति के लिए चयन.—लागू नहीं।

16. आरक्षण.—सेवा में नियुक्ति, हिमाचल प्रदेश सरकार द्वारा समय-समय पर अनुसूचित जातियों/अनुसूचित जनजातियों/अन्य पिछड़े वर्गों और अन्य प्रवर्ग के व्यक्तियों के लिए सेवा में आरक्षण की बाबत जारी किए गए आदेशों के अधीन होगी।

17. विभागीय परीक्षा.— लागू नहीं।

18. शिथिल करने की शक्ति.—जहां राज्य सरकार की यह राय हो कि ऐसा करना आवश्यक या समीचीन है, वहां यह कारणों को लिखित में अभिलिखित करके और हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से इन नियमों के किन्हीं उपबन्धों को किसी वर्ग या व्यक्तियों के प्रवर्ग या पदों की बाबत, शिथिल कर सकेगी।

[AUTHORITATIVE ENGLISH TEXT OF THIS DEPARTMENT NOTIFICATION NO. HEALTH-A(3)-1/2007, DATED 28-5-2009 AS REQUIRED UNDER CLAUSE (3) OF ARTICLE 348 OF THE CONSTITUTION OF INDIA].

HEALTH & FAMILY WELFARE DEPARTMENT

NOTIFICATION

Shimla-2, the 28th May, 2009

No. Health-A(3)-1/2007.—In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with the Himachal Pradesh Public Service Commission, is pleased to make the Recruitment & Promotion Rules for the post of Senior Radiographer, Class III (Non-Gazetted), in the Department of Health & Family Welfare, Himachal Pradesh as per Annexure-A attached to this notification, namely :-

1. Short title and commencement .—(1) These Rules may be called the Himachal Pradesh, Department of Health & Family Welfare, Senior Radiographer, Class III (Non-Gazetted), Recruitment and Promotion, Rules, 2009.

(2) These Rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

By order,
Sd/-
Pr. Secretary (Health).

ANNEXURE-“A”

**RECRUITMENT AND PROMOTION RULES FOR THE POST OF SENIOR
RADIOGRAPHER (NON-GAZETTED) CLASS-III, IN THE HEALTH & FAMILY
WELFARE DEPARTMENT, HIMACHAL PRADESH**

1. **Name of the posts.**— Senior Radiographer.
2. **Number of posts .**—40 (Forty).
3. **Classification .**—Class-III(Non-Gazetted) (Non Ministerial).
4. **Pay Scale.**— Rs. 5480-160-5800-200-7000-220-8100-275-8925.
5. **Whether Selection Post or Non-Selection Post.**—Non-Selection.
6. **Age for direct Recruitment .**—Not Applicable.
7. **Minimum Educational and other qualification required for direct recruits.**—
Not Applicable.
8. **Whether age and educational qualification prescribed for direct recruits will apply in the case of the promotes.**—(i) *Age* : Not applicable.
(ii) *Educational Qualification* : N.A.
9. **Period of probation, if any.**—Two Years subject to such further extension for a period not exceeding one year as may be ordered by the competent authority in special circumstances and reasons to be recorded in writing.
10. **Method of recruitment:Whether by direct recruitment or by promotion, deputation, transfer and the percentage of posts to be filled-in by various methods.**—100% by promotion.
11. **In case of recruitment by promotion, deputation, transfer, grade from which promotion/ deputation/ transfer is to be made.**— By promotion from amongst the Radiographers who possess five years regular service or regular combined with continuous adhoc service rendered, if any, in the grade.

Provided that for the purpose of promotion every employee shall have to serve atleast one term in the Tribal/Difficult areas subject to adequate number of post(s) available in such area:

Provided further that the proviso(I) supra shall not be applicable in the case of those employees who have five years or less service, left for superannuation.

Provided further that Officers/Officials who have not served atleast one tenure in Tribal/difficult area shall be transferred to such area strictly in accordance with his/her seniority in the respective cadre.

Explanation I.—For the purpose of proviso I supra the “term” in Tribal/Difficult areas shall mean normally three years or less period of posting in such areas keeping in view the administrative requirements and performance of the employee.

Explanation II.— For the purpose of proviso I supra the Tribal/Difficult Areas shall be as under :

1. District Lahaul Spiti
2. Pangi and Bharmour Sub Division of Chamba District.
3. Dodra Kwar Area of Rohru Sub-Division.
4. Pandrah Bis Pargana, Munish Darkali and Gram Panchayat Kashapat, Gram Panchayats of Rampur Tehsil of District Shimla.
5. Pandrah Bis Pargana of Kullu District.
6. Bara Bhangal Area of Baijnath Sub Division of Kangra District.
7. District Kinnaur.
8. Kathwar and Karga Patwar Circles of Kamrau Sub Division Tehsil, Bhaladh Bhalona and Sangna Patwar Circles of Renukaji Tehsil and Kota Pab Patwar Circle of Shillai Tehsil, in Sirmour District.
9. Khanyol-Bagra Patwar Circle of Karsog Tehsil, GadaGussaini, Mathyani, Ghanyar, Thachi, Baggi, Somgad and Kholanal of Bali Chowki Sub Tehsil, Jharwar, Kutgarh, Graman, Devgarh, Trailla, Ropa, Kathog, Silh-Badhwani, Hastpur, Ghamrehar and Bhatehar Parwar Circle of Padhar Tehsil, Chiuni, Kalipar, Mangarh, Thach-Bagra, North Magru and South Magru Patwar Circles of Thunag Tehsil and Batwara Patwar Circle of Sunder Nagar Tehsil in Mandi District.

1. In all cases of promotion, the continuous adhoc service rendered in the feeder post, if any, prior to regular appointment to the post shall be taken into account towards the length of service as prescribed in these Rules for promotion subject to the condition that the adhoc appointment/ promotion in the feeder category had been made after following proper acceptable process of selection in accordance with the provisions of R&P Rules, provided that :-

- (i) in all cases where a junior person becomes eligible for consideration by virtue of his/her total length of service (including the service rendered on adhoc basis, followed by regular service/ appointment) in the feeder post in view of the provision referred to above, all persons senior to him/ her in the respective category/post/cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration;

Provided that all incumbents to be considered for promotion shall possess the minimum qualifying service of at least three years or that prescribed in the R&P Rules for the post, whichever is less;

Provided further that where a person becomes ineligible to be considered for promotion on account of the requirements of the preceding proviso, the person(s) junior to him/ her shall also be deemed to be ineligible for consideration for such promotion;

Explanation .—The last proviso shall not render the junior incumbent(s) ineligible for consideration for promotion if the senior ineligible person(s) happened to be Ex-Serviceman recruited under the provisions of Rule-3 of the Demobilized Armed Forces Personnel (Reservation of vacancies in Himachal State Non-Technical Service) Rules, 1972 and having been given the benefit of seniority there-under or recruited under the provisions of Rule-3 of the Ex-Serviceman (Reservation of vacancies in Himachal Pradesh Technical Services) Rules, 1985 and having given the benefit of seniority there-under :-

(2) Similarly, in all cases of confirmation adhoc service rendered on the feeder post, if any, prior to the regular appointment/ promotion against such post shall be taken into account towards the length of service, if the adhoc appointment/ promotion had been made after proper selection and in accordance with the provision of the R&P Rules.

Provided that inter-se-seniority as a result of confirmation after taking into account, adhoc service rendered as referred to above shall remain unchanged.

12. If a Departmental Promotion Committee exists, what is its composition.—As may be constituted by the Govt. from time to time.

13. Circumstances under which the HP Public Service Commission is to be consulted in making recruitment.—As required under the law.

14. Essential requirement for direct recruitment.—Not Applicable.

15. Selection for appointment to post by direct recruitment.—: Not Applicable.

16. Reservation.—The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled Caste/Scheduled Tribes/Other Backwards Classes/other categories of persons issued by the Himachal Pradesh Government from time to time.

17. Departmental Examination.— Not Applicable.

18. Power to Relax.—Where the State Government is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with the H.P. Public Service Commission, relax any of the provisions of these Rules with respect to any class or category of persons or posts.

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla-2, 9th March, 2012*

No. Sharm (A) 7-1/2005 (Award).—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Dharamshala of the following cases on the website of Labour & Employment Department:-

Sr. No.	Case No.	Title of the Case	Date of Award
1.	19/08	S/Shri Hem Raj , HPSEB Una.	09-11-2011
2.	187/2005	Parveen Kumar, RDD Shimla-9.	19-11-2011
3.	55/08	Raj Kumar, DFO, Kullu.	22-11-2011
4.	479/09	Jagdish Chand, ---do----	22-11-2011
5.	492/09	Ajay Dev, EEI&PH-Killar.	25-11-2011
6.	473/09	Tilak Raj, -----do-----	25-11-2011
7.	417/09	Hukkam Chand, ----do----	25-11-2011
8.	416/09	Kishan Chand, ----do---	25-11-2011
9.	46/10	Faquir Chand, EEI&PH- Pangi.	25-11-2011
10.	429/09	Prem Lal, -----do----	25-11-2011
11.	189/10	Hari Singh, EEI&PH Killar.	25-11-2011
12.	430/09	Negi Ram, -----do-----	25-11-2011
13.	419/08	Shouni Devi, -----do-----	25-11-2011
14.	183/10	Karam Dev, EEHPPWD, Pangi.	25-11-2011
15.	475/09	Ram Jeet, EE-I&PH-Killar.	25-11-2011
16.	224/10	Puran Chand, EE-HPPWD, Pangi.	25-11-2011
17.	98/10	Dharam Chand-----do----	25-11-2011
18.	415/09	Uttam Chand, EE-I&PH, Killar.	25-11-2011
19.	497/09	Inder Singh, EE HPPWD, Killar .	25-11-2011
20.	471/09	Matru Devi, EEHPPWD-Pangi.	25-11-2011
21.	44/10	Karam Dev, EE I&PH Pangi.	25-11-2011
22.	190/10	Sunni Devi, EE-HPPWD Killar.	25-11-2011
23.	48//10	Guddi Devi, EE-I&PH, Pangi.	25-11-2011
24.	488/09	Man Singh, EE HPPWD-Killar.	25-11-2011
25.	23/2010	Suresh Kumar EE-HPPWD Baijnath.	28-11-2011
26.	661/08	Mohan lal , M.D. H.P. Tourism.	28-11-2011
27.	339/2009	Taj Singh, -----do-----	28-11-2011
28.	138/2006	Mohan Lal, ASE-HPSEB-J/Nagar.	29-11-2011

29.	72/2006	Agar Singh,GM M/s Malana Ltd.	29-11-2011
30.	65/2008	Ramesh Kumar,Conservator of Forest	30-11-2011
31.	210/2007	Kuldeep Chand,----do-----	30-11-2011
32.	209/07	Dev Raj,-----do-----	30-11-2011
33.	59/08	Om Prakesh,-----do-----	30-11-2011
34.	18/08	Udho Ram,-----do-----	30-11-2011
35.	625/08	Balbir Singh,-----do-----	30-11-2011
36.	64/08	Suresh Kumar-----do-----	30-11-2011
37.	170/10	Chandu Lal ,MD HPFinacial Corp.	02-12-2011
38.	63/10	Jai Dai ,Director Rural Development.	03-12-2011
39.	132/09	Hari Dass, EE HPPWD.	05-12-2011
40.	534/08	Krishan Chand, -----do-----.	05-12-2011
41.	37/09	Naveen Kumar,-----do-----	05-12-2011
42.	19/09	Satya Devi,-----do-----	05-12-2011
43.	32/10	Gogi, DFO, Nurpur.	06-12-2011
44.	223/10	Devi Singh, DFO,J/Nagar.	15-12-2011
45.	233/10	Devi Singh,-----do-----	15-12-2011
46.	668/08	Devi Lal,Horticulture Pangi.	07-12-2011
47.	42/10	Madan, HPFC- Chamba.	07-12-2011
48.	246/10	Tak Chand, EEHPPWD-Salooni.	16-12-2011
49.	37/10	Sanjeev Kumar, EE HPSEB.	30-12-2011
50.	179/10	Parkesh Chand, IPH, Karsog.	30-12-2011
51.	53/08	Naresh Kumar, -----do----	30-12-2011
52.	341/09	Khem Raj,-----do-----	30-12-2011
53.	542/08	Gagan Singh,HPPWD-Dharampur.	30-12-2011
54.	124/04	Gen. Secy. Kol Dam.	31-01-2011
55.	185/07	Yan Singh, EEHPPWD,Kullu.	06-01-2012
56.	98/07	Rajinder Sharma,HPSEB.	06-01-2012
57.	183/07	Bal Mukand,HPSEB,Karsog.	06-01-2012
58.	100/07	Chuhar Singh, DFO, Suket.	06-01-2012
59.	448/08	Naresh Kumar, DMHPSFC.	06-01-2012
60.	454/09	Ravi Singh,EE-HPSEB.	07-01-2012
61.	160/09	Manoher Lal,-----do-----	07-01-2012
62.	375/09	Om Prakesh,-----do-----	07-01-2012
63.	138/09	Mohan Singh,-----do-----	07-01-2012
64.	55/06	Man Singh,Manager R&T Factory.	07-01-2012
65.	09/08	Prem Lal,EE-HPPWD, Bilaspur.	07-01-2012
66.	62/10	Chain Singh,EO Municipal Committee.	21-01-2012
67.	92/10	Anil Kumar,-----do-----.	21-01-2012

68.	61/10	Sunil Kumar,-----do-----.	21-01-2012
69.	60/10	Prem Singh,-----do-----	21-01-2012
70.	59/10	Susheel Kumar,-----do-----.	21-01-2012
71.	55/04	Kuldeep Kaur,HP State Environment.	21-01-2012

BY order,
Sd/-
ACS (Labour & Employment).

**COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 625/2008

Date of Institution : 29.10.2008

Date of decision : 30.11.2011

Shri Balbir Singh S/o Shri Amin Chand, R/o Village Jassour, P.O. Rounkher, Tehsil &
Distt. Kangra, H.P. . . *Petitioner.*

Versus

The Conservator of Forests, Working Plan Division Dharamshala, Distt. Kangra, H.P.
. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Shri N.L. Kaundal, AR
Shri Vijay Kaundal, Adv.
For the Respondents : Shri Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Balbir Singh S/o Shri Amin Chand, Village Jassour, P.O. Rounkher, Tehsil & Distt. Kangra, H.P. w.e.f. 22.12.2000 by the Divisional Forest Officer, Working Plan Division Dharamshala, Distt. Kangra, H.P. without complying the provisions of Industrial Disputes Act, 1947, is legal and justified? If not, what relief of service benefits, seniority, back wages and other consequential benefits the workman concerned is entitled to?”

2. In pursuance to the reference it is averred by the petitioner that he was engaged by the respondent as a daily waged worker in the year 1997 and he worked under the control of DFO, Working Plan Division Dharamshala upto 15.5.1999. Thereupon his services were disengaged. The petitioner was constrained to file an O.A. No. (D) 325/99 before the Hon’ble Administrative Tribunal and on the basis an order dated 24.3.2000 the petitioner came to be re-engaged by the respondent. The petitioner was again disengaged by the respondents in the month of June/July,

2000. Again O.A. No. (D) 495/2000 came to be filed by the petitioner and by virtue of an order passed by the said Tribunal the petitioner was again re-engaged on 9.11.2000. He thereafter worked till 22.12.2000 when his services were again dispensed with. The petitioner again filed an original application bearing O. A. No. (D) 554/2001. The disengagement of the petitioner (16.11.1999, June/July, 2000 and 22.12.2000) is stated to be illegal, unjust and arbitrary as no notice or charge-sheet had been served upon the petitioner and nor any retrenchment compensation had been paid to him as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. It is further stated by the petitioner that he had completed 240 days continuous service and as such the infraction of the provisions of Section 25-F renders his disengagement null and void.

4. It is further the case of the petitioner that one similar person Shri Kashmir Singh who had been working with the petitioner in the same Division at Dharamshala had also been terminated by the respondent. He too, had filed an O.A. No. (D) 106/2001 and had come to be reinstated by the respondent. He is still working with them. It is also averred by the petitioner that the respondents have retained persons junior to him in service and have also engaged fresh hands after his termination and as such the action of the respondent is also violative of the provisions of Section 25-G and 25-H of the Act.

5. Further, per the petitioner his original application No. 554/2001 had been dismissed on 13.10.2004 on the grounds of jurisdiction, with liberty to the petitioner to approach the competent forum and hence the present reference.

6. The petitioner thus prays for his re-engagement with all consequential benefits.

7. While contesting the claim the respondents have inter alia raised preliminary objections vis-à-vis maintainability and suppression of material facts.

8. On merits it is the case of the respondents that the services of the petitioner was disengaged on 22.12.2000 by giving one month's notice as contemplated under Section 25-F of the Act along with the retrenchment compensation, but the petitioner had refused to accept the same. The respondents have annexed along with copy of the notice and the refusal thereto. Further, per the respondents, the petitioner had not completed 240 days in the preceding 12 months of his disengagement.

9. In respect of Kashmir Singh it is averred by the respondent that he was engaged on 27.12.1996 and had completed 240 days continuously for 10 years starting from 1997 to 2006. He was regularized in the year 2006 subject to the policy of the State.

10. It is further averred by the respondents that the services of the petitioner was disengaged on 22.12.2000 when the working plan division was wound up, after following the proper procedure, as per the Act. It is further submitted by the respondent that the work pertaining to a Working Plan Division are temporary and are in progress only till the preparation of the working plan. The preparation of Dharamshala Working Plan was completed during May, 2001, which necessitated the disengagement of the petitioner.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I notice that on 3.6.2008 the following issues had been framed by my Ld. Predecessor:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits the petitioner is entitled to? . . . OPR.
2. Whether the petition is not maintainable. . . OPR.
3. Relief.

13. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Partly yes

Issue No. 2 : No

Relief : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

14. The simple case set up by the petitioner is that his disengagement w.e.f. 22.12.2000 was illegal and unlawful as no notice had been served to the petitioner, as contemplated under Section 25-F of the Act and neither any charge sheet had been served on him and nor any inquiry conducted against him before disengaging him. It is also sought to be portrayed that persons junior to the petitioner had been retained and even fresh hands have been engaged after his disengagement and as such the action of the respondent is violative of the provisions of Section 25-G and 25-H of the Act.

15. Per contra, the respondents are stated to have issued retrenchment notice under Section 25-F of the Act on doing away with the services of the petitioner w.e.f. 19.12.2000. Over and apart it is the specific contention of the respondents that the services of the petitioner was terminated on 22.12.2000 when the working plan division had been wound up and proper procedure under the Act had been resorted to while disengaging the services of the petitioner. The respondents have further averred that though the petitioner had not completed 240 days in the preceding 12 months of his disengagement, yet a notice was issued to him. The work pertaining to the work plan divisions are stated to be temporary in nature and remained in existence only till the preparation of the working plans of the concerned division.

16. No retrenchment notice has been placed or proved on record. Even the Chief Conservator of Forest, working plan and settlement, Mandi who has appeared as RW-1 has also not whispered a word about the issuance of notice to the petitioner. It has thus to be inferred that no notice under Section 25-F of the Act had been issued to the petitioner.

17. The fact does emerges from the evidence on record is that the disengagement of the petitioner was necessitated because of the wounding up of the working plan division. More particularly, as the working plan had been submitted by the respondent. The respondent thus was very much within its right to have exercise the option contemplated by Section 25-F of the Act but the respondents has neither issued any notice or paid retrenchment compensation as per the requirements of Section 25-F. The petitioner was entitled to the same as he had put in more than 240 days even prior to May, 1999, as is clear from Ex. RW-1 and by fiction of law even in the year 2000, as the Hon'ble Tribunal had protected his continuity and seniority while ordering his re-engagement earlier.

18. The Ld. Authorized Representative of the petitioner has further strenuously argued that the respondents had retained persons junior to him and also engaged fresh hands after the disengagement of the petitioner and as such the action of the respondent is violative of the provisions of Section 25-G and 25-H of the Act. In this behalf much stress has been laid on Ex. D1 which is a seniority list of workmen prepared by the respondent. The Chief Conservator of Forest Shri Chandresh Sharma while appearing as RW1 has admitted that Ex. D1 has been prepared by the department. The witness has further admitted that Sunder Singh reflected at serial No.1 was working with the respondent on 22.12.2000 and even one Tek Singh reflected at serial No.3 was engaged on 18.11.2002 and the said workmen is still working with the respondent. He has also admitted that when Tek Singh was engaged no notice was issued to the petitioner for re-engagement. The witness has further tried to portray that the workmen reflected in Ex. D1 were posted in Kangra Division. However, the witness has again stated that Ex. D1 is a seniority list pertaining to the Dharamshala Working Plan Division. He has also admitted that Kashmir Singh was initially engaged at Dharamshala and is presently working at Shimla. The mandays of Kashmir Singh has also been placed on record vide Ex. RW1/F.

19. As per the evidence on record Kashmir Singh was engaged in 1996 and he has continuously worked (with 240 days in each calendar year till the year 2006).

20. No doubt, since the working plan had been submitted the respondents were within their right to have retrenched the services of the petitioner, but the same was liable to be done strictly on the principle of 'last come first go', as envisaged under Section 25-G of the Act. The Chief Conservator of Forest, while appearing as RW1 has admitted that Ex. D1 pertains to the entire Dharamshala working plan division. If that was so, it clearly emerges from the seniority list that Sunder Singh was junior to the petitioner as he was engaged for the first time on 18.11.1998 while one Tek Singh had been engaged for the first time on 18.11.2002. If that was so the action of the respondents in disengaging the services of the petitioner was not strictly in compliance with the principle of 'last come first go' and nor the provisions of Section 25-H had been followed while engaging fresh hands. Both the provisions are mandatory in nature. The non compliance of mandatory provisions of the Act is thus fatal to the respondent. Not only this by now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can ably be drawn by the judgments of the Hon'ble Supreme Court in Central Bank of India vs. S. Satayam, 1996 (5) SCC 419 and Harjinder Singh vs. Punjab State Ware House Corporation, 2010 (3) SCC 192 and our own Hon'ble High Court in State of H.P. vs. Prem Lal 2010 (3) Him LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No. 3887/2011 decided on 3.6.2011). To this limited extent the disengagement of the petitioner is illegal. So is the non-issuance of the notice under Section 25-F, fatal to the case of the respondent.

21. The respondent while disengaging the petitioner has not followed the principle of 'last come first go'. Even if the working plan had been submitted the petitioner based on his seniority should have been offered employment in some other part of the working plan division. This gains significance because even as per RW1 the seniority list of workmen is maintained at divisional level. The respondents were duty bound to have maintained the divisional level seniority list and thereupon resorted to retrenchment strictly on the basis of the seniority. A bare glance at Ex. D1 shows that such procedure was not followed by the respondent. To this limited extent the disengagement of the petitioner is bad, being violative of the provisions of the Section 25-G and 25-H of the Act. Consequently the action of the respondents is set aside. The petitioner is directed to re-engage forthwith. Seeing to the peculiar circumstances of the fact discussed hereinabove the petitioner shall not be entitled to any back wages, more particularly since the working plan vis-à-vis Dharamshala had already been submitted and thereupon the petitioner otherwise had to be stationed at some other place in the division. The issue is accordingly decided partly in favour of the petitioner and against the respondent.

Issue No. 3 :

22. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

RELIEF

23. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall not be entitled to back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today the 30th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 62/2010

Date of Institution : 23.4.2010

Date of decision : 21.01.2012

Shri Chain Singh S/o Shri Maohan Lal, R/o Village & PO Tretha, Tehsil Dalhousie, Distt. Chamba, H.P.
. .Petitioner.

Versus

The Executive Officer, Municipal Council, Dalhousie, Distt. Chamba, H.P.

. . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. M.G. Sharma, Adv.

For the Respondent : Sh. Rahul Sharma, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Chain Singh S/o Sh. Maohan Lal, by The Executive Officer, Municipal Council, Dalhousie, Distt. Chamba, H.P. w.e.f. 13.6.2002 vide notice dated 14.5.2002 on the plea of nonavailability of work and funds, whereas worker

claims that plenty of work is available, is legal and justified? If not, to what back wages, service benefits and relief the above workman is entitled to from the above employer?"

2. In furtherance to the reference it is pleaded by the petitioner in the statement of claim that he was engaged as a beldar on daily wages in May, 1999. The petitioner continued working as such till his disengagement on 13.5.2002. The respondent vide a notice dated 14.5.2002 had dispensed with his services w.e.f. 13.6.2002. As per the petitioner even while issuing notice to the petitioner no retrenchment compensation had been paid to him and as such the alleged notice is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is further averred by the petitioner that after his disengagement he had approached the Hon'ble Administrative Tribunal by filing an original application which was disposed of with the directions that the petitioner shall be considered for re-engagement subject to availability of work and funds, vide an order dated 27.6.2003. Since the respondent had raised the ground of jurisdiction before the Hon'ble Administrative Tribunal the petitioner has preferred the present reference.

3. It is also averred by the petitioner that after his disengagement the respondents have indulged in unfair labour practices as the work which was available with the respondent was got executed through contractors, resulting in denial of re-engagement to the petitioner. In spite of availability of work and funds with the respondents the petitioner has requested the respondent to re-engage him but to no avail. The petitioner had completed more than 240 days in the preceding 12 months of his disengagement and as such his disengagement is violative of the provisions of Section 25-F, 25-G and 25-H of the Act.

4. The petitioner thus prays for his re-engagement with all consequential benefits.

5. While contesting the claim the respondent has inter alia raised the preliminary objections vis-à-vis maintainability, cause of action, limitation, non joinder of necessary parties. It is also averred by the respondent that the right of the employer to get the work executed departmentally or through a contractor cannot be a subject matter of reference and the replying respondent shall consider the case for reengagement as and when departmentally work becomes available.

6. On merits it is the case of the respondent that the petitioner was engaged on 12.5.1999 but for performing for casual and intermittent work only. It is further averred by the respondent that the termination of the petitioner on account of completion of casual work and non availability of work which was required to be executed through departmental labour is not retrenchment. The services of the petitioner by way of notice dated 14.5.2002 with the directions to the petitioner to collect the retrenchment compensation on 17.6.2002 which is fair, just and legal. The petitioner had himself failed to receive the retrenchment compensation.

7. It is also averred by the respondent that the right and discretion of an employer, as to how and in which manner and from whom the developmental works are to be got executed cannot be restricted under any law as to compel an employer to get the developmental works executed through departmental labour only. Thus the claim of re-engagement is without merit and the petitioner is not entitled to any relief. The respondent thus prays for the dismissal of the claim.

8. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

9. On 28.5.2011 the following issues had come to be framed by this Court:

1. Whether the termination of the petitioner w.e.f. 13.6.2002 is violative of the provisions of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the reference is not maintainable, as alleged. If so, what effect? . . . OPR.
3. Whether the reference is hit by the vice of delay and laches, as alleged. If so, to what effect? . . . OPR.
4. Relief.

10. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
 Issue No. 2 : No
 Issue No. 3 : No
 Relief. : Allowed partly as per the operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

11. It is not denied that the petitioner had initially come to be engaged on 12.5.1999. It is however the case of the respondent that the petitioner was engaged for casual and intermittent work only. The seniority list of the daily waged staff annexed along with as Mark A also reflects the mandays of the petitioner. As per the mandays on record the petitioner has worked continuously and uninterruptedly right from May, 1999 till his disengagement w.e.f. 13.6.2002. The contention of the respondent that the petitioner was engaged for casual and intermittent work is thus belied by the mandays on record.

12. No doubt a notice was issued to the petitioner vide Ex. RW1/A The respondent did issue one month's notice to the petitioner as per the requirement of Section 25-F but the respondent had been directed to receive his retrenchment compensation if any from the office on 17.6.2002. No retrenchment compensation had been quantified but in generalized terms the petitioner had been asked to collect his retrenchment compensation if any on 17.6.2002.

13. Para Section 25-F of the Act reads thus:

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. It is clear from the reading of the Section that the requirement prescribed in Sub Section (a) and (b) is a condition precedent to retrenchment and failure to comply the same would render the impugned retrenchment invalid and inoperative. The provisions of sub section (a) and (b) are to precede the retrenchment and not to follow it. In *National Iron and Steel Company Ltd. vs. State of West Bengal*, (1967)II LLJ 23 (SC). The Hon'ble Supreme Court in a similar situation, where a notice dated 15th November, 1958 was issued to the workmen terminating the services of the workmen w.e.f. November 17, and directed him to collect one month's notice in lieu of notice on November 20 or thereafter had held manifestly the provisions of Section 25-F had not been complied with. The same happens to be the situation in the present case. This has obviously been done in the present case too, and therefore, the condition precedent for the retrenchment as envisaged under Section 25-F of the Act has not been fulfilled and this certainly invalidates the order of retrenchment itself. Clause (a) and (b) of Section 25-F are obligatory and create a condition precedent to retrenchment. Therefore, if retrenchment compensation is not paid before the workmen are asked to go, retrenchment order would be bad in law and invalid. Moreover the tender of compensation in order to be valid under Section 25-F should be of the precise amount and should be made simultaneously with the termination of the service. The fact that the employer wrote to the workmen to clear his account in the office will not amount to an offer of retrenchment compensation at the time of terminating his services. In this behalf support can be drawn from the judgment of the Hon'ble Punjab and Haryana High Court titled as *Kailash vs. Labour Court* (1998)III LLJ (Supp) 4 and a judgment of the Hon'ble Bombay High Court titled as *Managing Director, Bombay Film Laboratory Ltd. vs. L.G. Vasule* [(1998)1 LLJ 208 (Bom)].

15. It has thus to be held that the impugned retrenchment is invalid and inoperative in the eyes of law.

16. Though the respondents have categorically averred that it is sole prerogative of the employer to as to how and in which manner and from whom the developmental works are to be got executed but no evidence has been led to remotely show that after the year 2002 all the works were got executed through contractual labour. The mandays and seniority list of the daily waged worker show that all the workmen were working continuously and uninterruptedly. They were neither casual or intermittent workers. Nor was the petitioner. No evidence has to led to remotely show that the respondents have no work and funds after the year 2002.

17. Even assuming the pleaded case of the respondent, that it is the sole prerogative of the respondent to get work executed by a contractor or departmentally is to be appreciated, suffice it to say that respondent has misconstrued the provisions of law, atleast vis-à-vis the protection envisaged by the Industrial Disputes Act. As per the Vth schedule to abolish the work of a regular nature being done by workman, to give such work to contractors may also amount to an “unfair labour practice”. However, as discussed hereinabove supra the said fact has been pleaded but not been proved by the respondent.

18. For all the foregoing reasons discussed above it is held that the retrenchment of the petitioner is invalid and inoperative in the eyes of law. Consequently the retrenchment of the petitioner is set aside and quashed. As a sequel thereto the petitioner is directed to be re-engaged. He shall be entitled to seniority and continuity from the date of his illegal disengagement. Seeing to the peculiar circumstances on record and more particularly the fact that the petitioner has not

worked during the said interregnum with the respondent he shall not be entitled to any back wages. The issue is decided accordingly.

Issue No. 2:

19. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3 :

20. No doubt the petitioner was terminated in the year, 2000 and the failure report was submitted by the conciliation officer on 8.6.2009. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008(1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

21. For all the aforesaid reasons discussed above the reference is allowed partly. The disengagement of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal disengagement, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 21st day of January, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 72/2006

Date of Institution : 20.3.2006

Date of decision : 29.11.2011

Shri Agar Singh S/o Shri Lachhman Singh, R/o Village Lohakar, P.O. Kapahi, Tehsil
Sundernagar, Distt. Mandi, H.P. . . *Petitioner.*

Versus

1. The General Manager M/s. Malana Power Company Ltd. Village Dokhara, P.O. Jari,
Distt. Mandi, H.P.

2. Sh. Basant Ram & Company (Contractor) Vill. Tung Battatri, P.O. Bahnu, Tehsil
Baldwara, Distt. Mandi, H.P. . . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR,
: Sh. Vijay Kaundal, Adv.

For the Respondent No. 1 : Sh. Rajesh Verma, Adv.

For the Respondent No. 2 : Sh. H.C. Sharma, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Sh. Agar Singh S/o Sh. Lachhman Singh workman by the (1) The General Manager M/s. Malana Power Company Ltd. Kullu, H.P. (H.P.) (2) Sh. Basant Ram & Company (Contractor) Vill. Tung Battatri, P.O. Bahnu, Baldwara, Mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947 w.e.f. 1.11.2003 and whereas persons junior to him are still working as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. In pursuance to the reference it is averred by the petitioner that he was appointed as a Compressor Operator by the respondent on 9.11.1998 and he worked continuously as such till 31.7.2002. During his engagement his work and conduct was satisfactory. He had completed 240 days in each calendar year and the petitioner was working as a compressor operator in the mechanical department along with one Neelmani, Narayan Singh, Devi Singh and Suresh Kumar. All the aforesaid persons are stated to be junior to the petitioner.

3. The services of the petitioner was retrenched by the respondent w.e.f. 31.7.2002 whereas the retrenchment compensation and other benefits amounting to Rs.19083/- was paid to the petitioner on 24.8.2002 and as such his retrenchment was null and void. It is further averred by the petitioner that his co-workers Suresh Kumar, Devi Singh and others named hereinabove were also terminated by the respondent on 31.7.2002.

4. It is further averred by the petitioner that he was thereupon engaged by the respondents w.e.f. 1.8.2002 as Barrage Gate Operator and he continuously worked as such till 31.10.2003 but his name was shown to have been working with the contractor, one Basant Ram & Company. Per the petitioner he continued working under the respondent and also received the payments from them. It is further the case of the petitioner that Basant Ram (contractor) and the persons junior to the petitioner have since been retained by the company on its rolls and as such the disengagement of the petitioner is also violative of the principle of 'last come first go'. The disengagement of the petitioner w.e.f. 1.11.2003 is also violative of the provisions of Section 25-F of the Act. The contractor Mr. Basant Ram and Company was not a registered contractor engaged by the respondent company under the Contract Labour (Regulation and Abolition) Act, 1970 and as such the respondent was liable to pay the retrenchment compensation, reinstatement and other benefits. The petitioner thus prays for his reengagement with all consequential benefits.

5. While contesting the claim the respondent Nos.1 and 2 have filed separate replies.

6. The respondent no.1 raised preliminary objections vis-à-vis estoppel, maintainability and limitation. Per the respondent No.1 the petitioner had been assigned the specific job on contract basis and after completion of the same on 31.7.2002 the petitioner had been given a cheque amounting to Rs.19083/- as per the condition of the contractual employment, accepted by the petitioner.

7. On merits it is not denied that the petitioner was not working with the replying respondent w.e.f. 9.11.1998 to 31.7.2002. However, per the respondent the petitioner had been engaged for specific work. It is admitted that Basant Ram & Company was a contractor with the replying respondent and Basant Ram was earlier an employee of the replying respondent, before 31.7.2002.

8. It is admitted that persons named in the statement of claim were junior and still working with the replying respondent as Barrage Operators. However, their nature of job is stated to be different and the petitioner cannot be engaged on that basis. After 31.7.2002 the petitioner is stated to have worked with Basant Ram a registered contractor till 31.10.2003. The respondent no.1 thus prays for the dismissal of the claim.

9. The respondent No. 2 on the other hand while contesting the claim raised the preliminary objection that the reference was not maintainable qua the respondent no.2 as the petitioner had no enforceable cause of action against the said respondent. The respondent no.2 had further averred that he was earlier a contractor with the respondent No.1 and was presently working as a foreman with the present respondent No.1.

10. On merits it is submitted by the said replying respondent that he was an employee of the respondent No. 1 before 31.7.2002 and there after from 1.8.2002 to 30.9.2003 the petitioner worked as Barrage site gate operator with the replying respondent who was then a contractor, but under the management and control of the respondent No.1. The petitioner availed all the facilities available to the employee of the company including the payment of wages and accommodation. It is further averred by the respondent No.2 that from 1.8.2002 to 30.9.2003 work was assigned to the petitioner by the respondent No.1. The petitioner worked with the replying respondent but the management and control was that of the respondent No.1. The respondent No.1 had overall management and control of the work and the terms and conditions of the work was also settled by the respondent No.1. It is further admitted by the respondent No.2 that Devi Singh, Suresh Kumar, Narayan Singh, Neelmani and others are still working with the respondent No.1 as Barrage site gate operators. The attendance record of the petitioner is also stated to be in possession of the respondent No.1.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I notice that on 10.9.2007 the following issues had come to be framed by my Ld. Predecessor:

1. Whether the disengagement from service of the claimant by the respondents is proper and justified? OPR
2. Whether the claimant was engaged against a specific work on whose cessation his service came an automatic end. If so, its effect? . . OPR.
3. Whether there has been non-compliance with the provisions of Sec. 25-G of the Industrial Disputes Act? If so, its effect of the case? If so, its effect? . . OPP.
4. Whether the claimant was under the service of the respondent Nos.1 and 2? . . OPR.
5. Whether the petition is maintainable? . . OPR.
6. Relief.

13. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : Yes

Issue No.5 : No

Relief. : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

Issues No. 2 and 4 :

14. Both the issues are being taken up together for discussion as they are correlated and intermingled.

15. The issues gains significance because the respondents are seemingly not in unison regarding the engagement of the petitioner. Their stands are in contra distinction, as the petitioner is stated to have first worked against for specific work and thereafter worked under a subcontractor i.e. the respondent no.2. The case set up by the respondent No.1 is that the petitioner initially worked as a compressor operator with them from 9.11.1998 till 31.7.2002. Thereafter the petitioner had worked from 1.8.2002 to 31.10.2003 with Basant Ram Contractor i.e. respondent No.2.

16. The respondent no.2 on the other hand submits that no doubt the petitioner worked with him w.e.f. 1.8.2002 to 31.10.2003 but under the management and control of the respondent no.1 and the terms and conditions were also settled by the respondent no.1. The petitioner availed all the facilities available to the employee of the company including the payment of wages and accommodation.

17. Admittedly after 31.7.2002 the petitioner had been paid retrenchment compensation. However, the present dispute relates to his disengagement on 1.11.2003. The simple case of the respondent No.1 is that after 31.7.2002 the petitioner was not their employee, but was working with Basant Ram and Company i.e. the respondent No. 2. The respondent No.1 has very strongly urged that the petitioner had been engaged against specific project and after the completion of the same his services had been disengaged on 31.7.2002. Though the witness of the respondent No.1 namely Shri Vivek Sood, Dy. Manager P&A, Malana Power Company while appearing as RW1 and Shri Jagdish Kumar Beri, General Manager, Malana Power Company (RW2) have deposed that after having been engaged on casual basis on 9.11.1998 the petitioner was appointed as Work Assistant on contract basis from 1.10.1998 to 31.12.2001. The engagement of the petitioner was for a fixed period and was to automatically come to an end and cessation of work. Thereafter the services of the petitioner was extended from time to time and lastly w.e.f. 1.4.2002 to 31.7.2002. Apart from Mark-B, which is the appointment letter issued on 1.10.1999 there is nothing on record to substantiate the said plea of the respondent No.1. A close scrutiny of the deposition of both the witnesses show that w.e.f. 1.8.2002 the petitioner along with six seven workmen named in the statement of claim were placed at the disposal of one Basant Ram (Respondent No. 2) who is stated to be a contractor with the Company. It has clearly emerged from the deposition of RW1 and RW2 that the said Basant Ram was working with the Company, even prior to 1.8.2002 and he is still working with them as a foreman. In fact all other workmen except the petitioner are admittedly working with the company in one capacity or the other, who had been working along with the petitioner with said Basant Ram after 1.8.2002 till the disengagement of the petitioner. After 1.11.2003 all the other workmen have been working with the company and only the services of the petitioner done away with.

18. The so called contractor of the respondent company has appeared as RW3. He has categorically deposed that the petitioner has worked as a Barrage site gate operator with him under the management and control of the respondent no.1 and also received all the facilities available to the employees of the company including the payment of wages and accommodation. The work to the petitioner was also assigned during the said interregnum by the respondent no.1. Further per this witness 10 workmen were working with him during the said period of 13 months. The wages of the said workmen used to be paid by the company and even their attendance was marked by the company.

19. The joint reading of the deposition on record shows that practically the respondent no.2 was supplying contract labour for work of the respondent no.1. The same is explicitly clear from the deposition of the respondent No.2 while appearing as RW3. It was the modus operandi adopted by the respondent No.1. Admittedly it was not in consonance that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and as such can safely be termed to be not genuine, it was rather a sham. The same is obviously corroborated by none else but the witnesses of the respondent No.1. It has clearly emerged from the evidence that all the workmen except the petitioner who had been working with the so called contractor (respondent No.2) between 1.8.2002 and 30.11.2003 including the Contractor himself came to be engaged by the respondent No. 1. This fact itself speaks volumes about the conduct of the respondent No.1. The engagement of the petitioner and other workmen after 1.8.2002 was nothing but a novel idea propounded by the respondent No.1 to defeat the provisions of the labour laws, more particularly to deprive the workmen the status and privileges of continuity. It can safely be termed to be an "unfair labour" practice as stipulated in Fifth Schedule read with Section 2 (ra) of the Act.

20. No doubt the respondent No.1 paid retrenchment compensation to the petitioner after 31.7.2002, but, admittedly no such notice or compensation was offered to him after 1.11.2003. Even if the petitioner was earlier working on a specific project, though no conclusive evidence had been led by the respondent no.1 in this behalf. Admittedly the petitioner had worked continuously

with the respondent w.e.f. 1.8.2002 till 30.10.2003. He had completed 240 days during the said interregnum. As has been held hereinabove the petitioner was working under the aegis of the respondent No.1 till his disengagement in November, 2003. The respondent No. 2 in fact was aiding the respondent No.1 in creating a sham to defeat the provisions of the Act. Both the issues are thus held against the respondents 1 and 2 and in favour of the petitioner.

Issue No.1 and 3 :

21. Now, adverting to the question of the disengagement of the petitioner, suffice it to say that the persons junior to him are still working with the respondent No.1. In fact all the juniors to the petitioner were retained by the respondent no.1, even after having purportedly worked with Basant Ram contractor. In case the respondent no.1 was to do away with the services of any of the workmen for any reason, it had to adopt the principle of 'last come first go'. It has not been adhered to by the respondent No.1. By now it is otherwise fairly well settled that for invoking the protection of the aforesaid provisions even the condition of having completed 240 days is not a condition precedent. The petitioner thus was entitled to such protection in all circumstances. Not only this, the respondent No.1 has even engaged the so called contractor as a foreman after 30.10.2003. In such an eventuality, before engaging the contractor himself the statutory right of the workman was more important to have been addressed. The respondent No.1 failed to do so. It is thus held that the disengagement of the petitioner was violative of the provisions of Section 25-G and is thus illegal.

22. The Ld. counsel for the respondent No.1 has however strenuously argued that since the petitioner was a contractual employee his services had come to an end with the efflux of time and his disengagement cannot be termed to be a "retrenchment". He has in this behalf placed reliance on the judgment of the Hon'ble Supreme Court titled as Vidya Vardhaka Sangha & another vs. Y.D. Deshpande & Ors. (2006 LLR1233) and Bhogpur Co-operative Sugar Mills Ltd. vs. Harmesh Kumar (2007 LLR 183) and judgments of the Hon'ble Delhi High Court titled as New Delhi Municipal Council vs. Anil Kumar Gupta & Anr. (2006 LLR 1246) and Netaji Subhash Institute of Technology vs. Dilkhush Bairwa & Anr. (2006 LLR 847). I am afraid the ratio of the aforesaid judgments do not come to the rescue of the respondent No.1, as on merits it has been held while deciding issues no.2 and 4 that the petitioner was not a contractual employee with the respondent No.1.

23. Consequently the disengagement of the petitioner is set aside. The respondent no.1 is directed to re-engage the petitioner forthwith. He shall be entitled to continuity and seniority from the date of his illegal disengagement. Seeing to the conduct of the respondent no.1, as discussed hereinabove supra more particularly the fact that the respondent No.1 has violated the provisions of the Act with impunity and to frustrate the rights of a workman as well as the provisions of the Act, itself. The respondent No.1 shall pay 25% back wages to the petitioner w.e.f. the date of his disengagement till re-engagement. The issues are thus partly decided in favour of the petitioner and against the respondent.

Issue No. 5 :

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

25. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondent No.1 is directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement. The respondent No.1 shall pay

25%back wages to the petitioner from the date of his illegal disengagement. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 29th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H. P.**

Ref No. : 492/2009

Date of Institution : 20.11.2009

Date of decision : 25.11.2011

Shri Ajay Dev S/o Shri Laxman Dass, R/o Village Ghissal, P.O. Sach, Tehsil Pangi, District
Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P.
. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Ajay Dev S/o Shri Laxman Dass by The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P. w.e.f.2005 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that he was appointed as a beldar by the respondent in the year 1995 in I&PH Pangi at Killar. Thereafter he worked continuously and uninterruptedly till the year 2005, when his services were terminated orally, without any notice, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas his services were disengaged.

4. The petitioner thus contends that his termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of his termination.

5. The petitioner thus seeks his re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections vis-à-vis maintainability and the reference being hit by the vice of delay and laches.

7. On merits it is the case of the respondent that the petitioner had been continued till the year 2004 and thereafter the petitioner had abandoned his job and thereby also lost his seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder not filed. On 18.3.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. 2005 is violative in the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto. . . OPR.
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, its effect thereto. . . OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
Issue No. 2 : No
Issue No. 3 : No
Relief : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in November, 2004. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor

is their any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as his own witness has deposed that certain juniors to him were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, he was entitled to the protection of provisions of Section 25-G of the Act and the respondents was duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as State of H.P. vs. Prem Lal 2010 (3) Him. LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

Issue No. 2 :

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3 :

15. No doubt the petitioner was terminated in the year, 2005 and the failure report was submitted by the conciliation officer on 4.9.2008. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of

which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 192/2010
Date of Institution : 31.5.2010
Date of decision : 21.01.2012

Shri Anil Kumar S/o Shri Karam Chand, R/o Village Kunna, P.O. Balera, Tehsil Dalhousie,
District Chamba, H.P. . . *Petitioner.*

Versus

The Executive Officer, Municipal Council, Dalhousie, Distt. Chamba, H.P.

. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Ajay Choudhary, Adv.

: Sh. Sushil Jamwal, Adv.

For the Respondent : Respondent already exparte.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Anil Kumar S/o Shri Karam Chand, by The Executive Officer, Municipal Council, Dalhousie, Distt. Chamba, H.P. w.e.f. 10.7.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. In furtherance to the reference it is pleaded by the petitioner in the statement of claim that he was engaged as a beldar on daily wages in April, 1998. The petitioner continued working as such till his disengagement on 10.7.2002. The respondent vide a notice dated 10.6.2002 had dispensed with his services w.e.f. 10.7.2002. As per the petitioner even while issuing notice to the petitioner no retrenchment compensation had been paid to him and as such the alleged notice is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is further averred by the petitioner that after his disengagement he had approached the Hon'ble Administrative Tribunal by filing an original application which was disposed of with the directions that the petitioner shall be considered for re-engagement subject to availability of work and funds, vide an order dated 22.3.2003. Since the respondent had raised the ground of jurisdiction before the Hon'ble Administrative Tribunal the petitioner has preferred the present reference.

3. It is also averred by the petitioner that after his disengagement the respondent had engaged person junior and not followed the provisions of Sections 25-G and 25-H of the Act.

4. The petitioner thus prays for his re-engagement with all consequential benefits.

5. The respondent was duly served for 5.3.2011, but none had put in appearance on behalf of the respondent and hence the respondent was proceeded exparte.

6. The petitioner while appearing as PW1 has reiterated the pleas raised by him in his claim vide Ex. PW1/A. The petitioner has unequivocally deposed that he worked with the respondent from 30.4.1998 till 9.7.2002 and had completed 240 days in all the calendar years. His services were disengaged orally, without any notice and certain persons junior to the petitioner had been retained by the respondent. The dis-engagement of the petitioner was thus against the statutory mandate of the provisions of Sections 25-F and 25-G of the Act. The un-rebutted testimony of the petitioner thus shows that he had completed 240 days prior to his termination and as such the non-compliance of the provisions of Section 25-F was indeed illegal in the eyes of law. The respondent was duty bound to have issued the notice so contemplated under Section 25-F, before dispensing his services. However nothing of this sort was done by the respondent. The action of the respondent management is thus violative of the provisions of Section 25-F of the Act.

7. Even otherwise there is one notice purported to have been issued to the petitioner by the respondent issued on 10.6.2002 disengaging the petitioner w.e.f. 9.7.2002 and further directing the petitioner to collect retrenchment compensation if any on 15.7.2002.

8. Para Section 25-F of the Act reads thus:

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

9. It is clear from the reading of the Section that the requirement prescribed in Sub Section (a) and (b) is a condition precedent to retrenchment and failure to comply the same would render the impugned retrenchment invalid and inoperative. The provisions of sub section (a) and (b) are to precede the retrenchment and not to follow it. In *National Iron and Steel Company Ltd. vs. State of West Bengal*, (1967)II LLJ 23 (SC). The Hon'ble Supreme Court in a similar situation, where a notice dated 15th November, 1958 was issued to the workmen terminating the services of the workmen w.e.f. November 17, and directed him to collect one month's notice in lieu of notice on November 20 or thereafter had held manifestly the provisions of Section 25-F had not been complied with. The same happens to be the situation in the present case. This has obviously been done in the present case too, and therefore, the condition precedent for the retrenchment as envisaged under Section 25-F of the Act has not been fulfilled and this certainly invalidates the order of retrenchment itself. Clause (a) and (b) of Section 25-F are obligatory and create a condition precedent to retrenchment. Therefore, if retrenchment compensation is not paid before the workmen are asked to go, retrenchment order would be bad in law and invalid. Moreover the tender of compensation in order to be valid under Section 25-F should be of the precise amount and should be made simultaneously with the termination of the service. The fact that the employer wrote to the workmen to clear his account in the office will not amount to an offer of retrenchment compensation at the time of terminating his services. In this behalf support can be drawn from the judgment of the Hon'ble Punjab and Haryana High Court titled as *Kailash vs. Labour Court* (1998)III LLJ (Supp) 4 and a judgment of the Hon'ble Bombay High Court titled as *Managing Director, Bombay Film Laboratory Ltd. vs. L.G. Vasule* [(1998)I LLJ 208 (Bom)].

10. It has thus to be held that the impugned retrenchment is invalid and inoperative in the eyes of law. The disengagement of the petitioner is thus illegal and void in the eyes of law. It is consequently set aside. The respondent management is directed to re-engage the petitioner forthwith.

11. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement. No back wages are being awarded in favour the petitioner as similar workmen who had approached this Court and whose references were even contested by by the respondent, no back wages have been paid to them.

12. The reference is disposed off in the aforesaid terms. There shall be however no orders as to costs. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 21st day of January, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Dharamshala,

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 183/2007
Date of Institution : 1.11.2007
Date of decision : 06.01.2012

Shri Bal Mukand Sharma S/o Shri Amar Singh, R/o Village Bhuthi, P.O. Chauri Dhar,
Tehsil Karsog, District Mandi, H.P. . . *Petitioner.*

Versus

Executive Engineer, H.P.S.E.B. Electrical Division, Karsog, Tehsil Karsog, District Mandi,
H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Bimal Sharma, Adv.

For the Respondent : Sh. Tarun Pathak, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Bal Mukand Sharma S/o Shri Amar Singh workman by the Executive Engineer, H.P.S.E.B., Electrical Division, Karsog, Tehsil Karsog, District Mandi, H.P. w.e.f. 26.1.1998 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The short and simple case set up by the petitioner in the statement of claim is that he was engaged as a daily waged beldar by the respondent in the year 1971 and he continued working as such till 25.1.1998 when his services were disengaged without serving any notice or paying any retrenchment compensation, though the petitioner had completed 240 days in the preceding 12 months of his disengagement.

3. It is further the case of the petitioner that while disengaging his services persons junior to him were retained namely Dola Ram, Chet Ram, Gokal Ram, Pyare Lal and 14 other people

named in para no.2 of the claim. The action of the respondent thus was violative of the provisions of Section 25-G of the Industrial Disputes Act (hereinafter referred to as the Act). It is further the case of the petitioner that after his illegal retrenchment new hands had been engaged by the respondent one of them being Bhim Singh S/o Budhi Singh and as such the action of the respondent was also violative of the provisions of Section 25-H of the Act.

4. The petitioner had initially approached the Hon'ble Administrative Tribunal vide O. A. No. 366/1998 which was dismissed for want of jurisdiction with liberty to approach the competent forum.

5. The petitioner thus prays for his re-engagement with all consequential benefits.

6. While contesting the claim the respondents have averred that the petitioner was initially engaged as a daily rated beldar on 26.2.1984 and he continued working as such till May, 1988 though with certain breaks and he had never completed 240 days in any calendar years. It is denied that the services of the petitioner was illegally and arbitrarily dispensed with. The petitioner was retrenched after observing all codal formalities as required under the Act. He was re-engaged w.e.f. 26.2.1996 and he thereafter worked till 25.4.1996 only for 36 days. The petitioner was thereupon again reengaged for specific period of 18 days w.e.f. 8.1.1998 to 25.1.1998. It is denied that the persons junior to the petitioner were retained or any fresh hands have been engaged after the disengagement of the petitioner.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. On 11.5.2010 the following issues had framed by this Court:

1. Whether the termination of the petitioner w.e.f. 26.1.1998 is in violation of the provisions of the Industrial Disputes Act, 1947, as alleged. OPP.
2. If the above issue is decided in affirmative to what relief the petitioner is entitled to? OPP.
3. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

- Issue No. 1 : Yes, the disengagement of the petitioner being violative of Section 25-G and 25-H of the Act.
- Issue No.2 : As per operative part of the award.
- Relief. : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

10. Both the issues are being taken up together for discussion as they are correlated and intermingled.

11. Though the petitioner claims that he was engaged initially in the year 1971 but as per the respondent the petitioner had been engaged w.e.f. 26.2.1984 and he had worked till the year

1988 and thereafter he had been retrenched after observing the codal formalities as envisaged under the Act. The details of the mandays of the petitioner had been placed on record along with the reply filed by the respondent. The mandays show that at the time of his retrenchment the petitioner had completed 240 days. Thereafter as per the pleaded case of the respondent themselves the petitioner was reengaged on 26.2.1996 for a period of 36 days and worked from 8.1.1998 to 25.1.1998 for 17 days. The petitioner had been engaged for specific work for 17 days w.e.f. 8.1.1998 to 25.1.1998. No such order has been placed on record along with the reply to show that the petitioner was engaged for specific work in the year 1998. The respondents have led no evidence to substantiate their pleaded case. Their evidence was closed by orders of the court on 10.8.2011 when the respondent failed to lead evidence, though four opportunities had been granted to them in this behalf. Along with the reply too the mandays of the petitioner along with one notice dated 11.2.1988 and the amount of retrenchment compensation so paid have been annexed but no order has been placed on record showing that the petitioner was engaged for specific work.

12. Even if it is assumed that the petitioner had started work with the respondent w.e.f. 26.2.1984 and the petitioner worked till the year 1988 when his services were retrenched it is clear that the petitioner was again reengaged in the year 1996. How and under what circumstances the petitioner came to be disengaged w.e.f. 26.1.1998 has neither been spelt out by the respondent nor any evidence has been led in this behalf. The respondent had been directed to place on record the seniority list of the daily wagers working in Electrical Division Karsog but the same was not placed on record as it could not be traced by the respondent. The petitioner had placed on record a seniority list of daily waged workers as it stood on 25.7.1996, which had been purportedly placed on record by the respondents themselves before the Labour Officer during conciliation. The perusal of the seniority list shows that one Payari Lal S/o Sh. Suba Ram had been engaged by the respondent on 26.6.1995. The petitioner had been working with the respondent since the year 1984. Even after retrenching him in 1988 he was again called back for work in the year 1996. Till 1988 admittedly he had worked and was retrenched by the respondent. If the respondents were to reengage a person in the year 1995 the petitioner had to be offered opportunity being a retrenched employee as per the provisions of Section 25-H of the Act. Apparently it was not done by the respondent. The provisions of Section 25-H are statutory in nature. It is also not a case that the petitioner had not completed 240 days at the time of his retrenchment. The respondents were thus duty bound to have offered opportunity to the petitioner for reengagement while engaging Payari Lal on 26.6.1995. It was not done and as such the action of the respondent is violative of the provisions of Section 25-H of the Act. No doubt the respondent did re-engage the petitioner in 1996 but he was engaged purportedly for specific work and that too for 17 days. In this behalf no evidence has been placed on record that the petitioner was indeed engaged for specific work alone. Even if at that time the petitioner was to be disengaged the respondent had to resort to the principle of 'last come first go'. Even the said principle was not followed by the respondent. Consequently the disengagement of the petitioner held to be violative of the provisions of Section 25-G and 25-H of the Act. The issues are thus decided in favour of the petitioner and against the respondent. As a sequel thereto the respondents are directed to re-engage the petitioner. The petitioner shall be entitled to seniority and continuity w.e.f. the year 1996. Seeing to the peculiar circumstances discussed above he shall not be entitled to any back wages.

RELIEF

13. For all the aforesaid reasons discussed above the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to continuity and seniority w.e.f. the year 1996, though except back wages. The reference is answered

accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 6th day of January, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Dharamshala,

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 170/2010
Instituted on : 20.5.2010
Decided on : 2.12.2011

Shri Chandu Lal S/o Shri Duni Chand, R/o Village Chambi, P.O. Rajoon, Tehsil Palampur,
Distt. Kangra, H.P. . . *Petitioner.*

Vs

1. The Managing Director, Himachal Pradesh Financial Corporation, New Himrus Building, Circular Road Shimla-1

2. The Assistant General Manager, H.P. Financial Corporation District Office Ram Nagar, Dharamshala, Distt. Kangra, H.P. . . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajesh Arora, Adv.

For the Respondents : Sh. S.C. Vaid, Adv.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether the termination of services of Chandu Lal S/o Shri Duni Chand by (1) The Managing Director, Himachal Pradesh Financial Corporation, New Himrus Building, Circular Road Shimla-1 (2) The Assistant General Manager, H.P. Financial Corporation District Office Ram Nagar, Dharamshala, Distt. Kangra, H.P. w.e.f. 23.5.2008 without complying the provisions of Industrial Disputes Act, 1947 is legal & justified? If not, what back wages, seniority, service benefits and relief the above aggrieved workman is entitled to?”

2. The case set up by the petitioner in the statement of claim is that he was engaged as a Chowkidar by the respondent on 10.8.1990. He was deployed to work in Mehatpur, Distt. Una. The petitioner continued working with the respondents continuously till the year 2002 regularly and without any breaks. Thereafter the petitioner was posted in many other places i.e. Talibal, Jhalera etc. On 4.5.2007 the petitioner was deputed by the respondent as Chowkidar in

M/s. Dhiman Rice Mills Nichli Raisri, Distt. Una, H.P. and the petitioner had joined his duties on the said Rice Mill at Jhalera. On 23.5.2008 the petitioner received a letter from the respondent that the Rice Mill has been sold and the services of the petitioner stands terminated with immediate effect.

3. The disengagement of the petitioner is stated to be wrong, illegal and null and void and against the statutory provisions of Section 25-F and 25-N of the Industrial Disputes Act (hereinafter referred to as the Act). No notice as envisaged under Section 25-F of the Act was issued to the petitioner. It is further averred by the petitioner that after his disengagement i.e. after 23.5.2008, the respondents had retained persons junior to the petitioner namely Madan Lal, Om Prakash, Kisan Chand, Ishad and Chuni Lal and all have been regularized.

4. The disengagement of the petitioner on the basis of the terms/conditions of the contracts entered inter-se the parties, which inter alia restricted the right of the petitioner in terms of the protection guaranteed to him under the Industrial Disputes Act was stated to be void in the eyes of law. The petitioner thus seeks that the termination be declared null and void. He be re-engaged along with all consequential benefits.

5. While contesting the claim of the petitioner the respondent inter alia raised the preliminary submissions that the termination of the petitioner did not fall within the ambit of "retrenchment" as the services of the petitioner had been engaged as a Chowkidar in pursuance to a contract and his engagement was co-terminus with the sale of the taken over industrial unit under Section 29 of the State Financial Corporation Act, 1951. Moreover that the corporation does not have any regular vacancy of a Chowkidar engaged in taken over units and no rules and regulations have been framed to engage them on duties and as such the completion of 240 days of continuous service in a year cannot entitle them for regularization. The petitioner had been engaged in a taken over and a closed unit for watch and ward purposes. Therefore the petitioner cannot be deemed to be an employee/workman of the industrial concern. The status of employer and an employee inter se the parties were also disputed as the respondent corporation was only the owner of the assets of the company for a limited purposes under Section 29 of the State Financial Act, 1951.

6. On merits it is the case of the respondents that the petitioner was engaged purely on contract basis and his engagement was co-terminus to the sale of the taken over unit, where the petitioner had been appointed for watch and ward. The petitioner had himself agreed to abide by the terms of the contract and even executed an agreement in his behalf initially on 10.8.1990. His services were engaged and terminated time and again. Consequently the services of the petitioner were terminated on 22.7.2002 in view of the sale of the unit, one M/s. Vishal Door Hinges. The petitioner was again engaged to watch and ward the taken over assets of M/s. Gagret Woolen Mills Pvt. Ltd. on 10.4.2003. The petitioner had again entered into an agreement with the respondent on 5.5.2003. Likewise the petitioner was engaged to watch and ward taken over units M/s. Guru Nanak Mechanical Works, Tahliwal vide agreement dated 11.5.2004 and lastly one M/s. Dhiman Rice Mills Raisari, Distt. Una on 4.5.2007. On the sale of the assets of M/s. Dhiman Rice Mills the services of the petitioner was finally discontinued on 23.5.2008, in accordance with the terms and condition of the contract. The action of the respondent corporation was thus stated to be legal and valid. It was denied that the provisions of sections 25-F, 25-G and 25-N of the Act were applicable in the facts and circumstances of the case.

7. The respondents thus sought dismissal of the claim.

8. While filing rejoinder the contentions raised in the reply were denied and those in the statement of claim were reiterated by the petitioner.

9. On 17.2.2011 the following issues came to be framed by this Court:

1. Whether the termination of the petitioner w.e.f. 23.5.2008 is violative of the principle of Section 25-F and 25-H of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Relief.

10. On the basis of the close and analytical examination of the pleadings, proof and other materials placed on record, the issue-wise findings may be returned thus:-

Issue No.1 : No

Relief. : Compensation awarded as per the operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

11. The case of the petitioner is that he was illegally terminated, in gross violation of the provisions of the Industrial Disputes Act whereas on the contrary as per the respondents the petitioner had been appointed on contract basis with a specific understanding that his services shall come to an end when the unit in which he was engaged was sold to the intending purchaser under Section 29 of the State Financial Corporation Act, 1951.

12. It is not denied that the petitioner had been appointed as a Chowkidar in different units w.e.f. 10.8.1990 till his termination on 23.5.2008. It is also not in dispute that the petitioner had completed “continuous service” i.e. having completed 240 days in each year with the respondents during his engagement. The only defence propounded by the respondents is that the petitioner had been engaged on daily wages on contract basis for looking after the ward and watch of a taken over unit and his services was co-terminus with the sale of the said unit to its purchaser.

13. The controversy is thus relegated to a very narrow compass i.e. whether the termination of the petitioner in such a situation would amount to “retrenchment” as envisaged under the provisions of the Industrial Disputes Act or not. The respondents placed on record the contracts whereby the petitioner had come to be engaged vide Ex. R-1 to Ex. R-6. To countenance the said plea of the respondents the petitioner however has averred that the agreement/contract dated 8.3.1995 had been entered by way of misrepresentation. His signature has been obtained on blank papers by the respondent corporation. The corporation had incorporated stipulations detrimental to the right of the petitioner which were also arbitrary and opposed to public policy.

14. In order to further prove the case the petitioner appeared as his own witness as PW1. He reiterated the averments in the statement of claim and further deposed that certain juniors to him have been regularized by the corporation. The petitioner has further deposed that his termination violated the provisions of Section 25-G and 25-H of the Act. The execution of the various contracts Ex. R1 to Ex. R6 though were not disputed but it is deposed by the petitioner that his signatures had been obtained by the respondents on blank papers, by misrepresentation and fraud and these papers were subsequently used and manipulated to put him in a disadvantageous position and that the contract was void unconscionable and opposed to public policy.

15. The respondents on the other hand examined one Sh. Sarbjeet Singh Thakur, Assistant General Manager, District Office of the Himachal Pradesh Financial Corporation, Shimla. He also deposed on the same lines as was averred in their reply. Per him the petitioner was engaged initially on oral contract basis at his own instances on 10.8.1990 for watch and ward of assets of M/s. Vishal

Doors and Hinges and it had been made clear to the petitioner that his service would be terminated as and when the unit on in which he is engaged is sold to the intending purchaser under Section 29 of the State Financial Corporation Act, 1951. He had agreed by the terms of the contract and had been disengaged on 22.7.2002 when the possession of the assets of the said unit was restored to the borrower. Thereafter the petitioner was re-engaged on 10.4.2003 and he worked in different units like M/s. Gagret Woolen Mills, M/s. Guru Nanak Mechanical Works and lastly in M/s, Dhiman Rice Mills Raisari, Una. He was finally disengaged on 23.5.2008. The petitioner had entered into agreements placed on record as Ex. R-1 to Ex. R-6. However per this witness the corporation has not framed any rules in respect of such employees. The engagement of the petitioner was stated to be co-terminus with this sale of the industrial unit in which he had been engaged.

16. Keeping in view the agreements Ex. R-1 to Ex. R-6 it is clear that the petitioner had been engaged for a specific purpose and his services had to come to an end automatically after the happening of the sale. It is not in dispute that the petitioner had been employed to work as a Chowkidar in various industries mentioned hereinabove. It was in furtherance of the watch and ward of the said unit which had been taken over by the respondent from time to time. The stipulation in the contracts (Ex. R-1 to Ex. R-6) was that in the event of the sale of the said unit to its purchaser the services would automatically come to an end. The said stipulation read with section 2(o) and (b) shows that the termination does not fall within the ambit of the term "retrenchment".

17. Though the Ld. counsel for the petitioner has urged with all vehemence that the act of terminating the services of the petitioner would squarely fall within the ambit of retrenchment and has also placed on record the details of the daily paid chowkidars engaged after 1993 till date in different parts of the State for the watch and ward of the units under the possession of the Corporation. It is further contended that the certain juniors have still being retained. The action of the respondent is also violative of the provisions of Section 25-G of the Industrial Disputes Act. A perusal of the details brought on record by the petitioner in relation to different districts show that invariably there is a date of engagement and date of disengagement of such workmen, except for certain cases pending in the Labour Court. However certain workmen who still continue working with the respondents corporation but it is because of the continuance of the appointment on the same terms. One Irshad Ahmed and other are however shown to have been regularized, but they are shown to have been working in different office of the respondent corporation, as is borne out from Mark-M on record. Again, since the appointment of the petitioner was on contract and that too for a stipulated work, I am afraid no parity can be drawn between their seniors and juniors. There are certain instances where the taken over units have not been sold and the arrangement is still continuing. The ld. counsel has further placed reliance upon the judgment of the Hon'ble Supreme Court titled as Central Bank of India vs. S. Satyam and Ors., 1996 5 SCC 419, Workmen of the Food Corporation of India vs. FCI, 1985 (2) SCC 136, Pramodh Jha and Ors. vs. State of Bihar and ors. 2003 (4) SCC 619, S.N. Nilajkar and Ors. vs. Telecom District Manager, Karnataka, 2003 (4) SCC 27. I am afraid the ratio of the aforesaid judgment except S.N. Nilajkar's case referred hereinabove supra are not applicable to the facts of the case. In Nilajkar's case discussed hereinabove supra though it has been held that the termination of a workman engaged in a scheme or project may not to retrenchment within the meaning of sub clause (b) but subject to terms and conditions, which have been enumerated thus (i) that the workman was employed in a project or scheme of temporary duration, (ii) the employment on contract and not as daily wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project, (iii) the employment came to an end simultaneously that the termination of the scheme or project on sustainably with the terms of contract and (iv) that the workman ought to have been apprised or made aware of the aforesaid terms by the employer and the placement of employment.

18. On the facts of the present case the contract Ex. R-1 to Ex. R-6 would result in a notice to the workman that his employment was for a particular purposes and was liable to be terminated

on the unit being sold to the respective buyer. Thus the present case in fact does fall within the conditions required to be satisfied as per the dictum of the Hon'ble Supreme Court in Nilajkar's case to bring it outside scope of retrenchment. It thus would not come to the rescue of the petitioner. The ld. counsel for the petitioner also placed reliance upon the judgment of Hon'ble High Court titled as Superintendent Engineer, HPSEB and Ors. vs. Bhura Ram and Anr., 2007 (2) SLC 279. It is contended that the engagement of new workman without offering job to the petitioner was in violation of the provisions of Section 25-H and he was entitled to its protection in this behalf. The petitioner has placed reliance on the details of the daily paid Chowkidar annexed by the corporation to other parts of the State.

19. Having considered the entire law and the facts on hand it no doubt emerges that the employment of the petitioner was contractual in nature and such may not be termed as "retrenchment", as per the Industrial Disputes Act. However one thing which glaringly comes to the fore is that the respondent corporation has been resorting to such contractual appointments where the casual labourers are employed for more than one year of continuous service and continued subsisting for a number of years, as in the present case the petitioner was employed for 15 years (1990 to 2002 and 2003 to 2008). There have been instances as per the list on record where people have worked from the period ranging from 10 to 15 years. All of them were engaged for ward and watch of the taken over units by the GIC. People were employed and thereafter disengaged on the basis of such contracts. However no scheme for absorption or even providing them reengagement on the basis of their seniority in other taken over units was made by the respondent. No doubt scheme and projects generating employment opportunities which are short lived are created by the State and its instrumentalities but even keeping in view the fact that liberal interpretation of labour laws is effected schemes such as this should not be made for long duration of time. While granting contractual employment to the people for even short periods, it is still expected of the State and its instrumentalities that some scheme is made atleast in cases where people have put more than five years continuous service with the respondents. If nothing else such workman could have been re-engaged in other taken over units, in the different parts of the State. Apparently there is no scheme formulated by the respondents till date. It is high time that such a scheme is formulated by the respondent either to absorb such workmen in the corporation or re-engage them in any other taken over unit in the different parts of the State. After having put in 15 years with the corporation the petitioner will have no place left to seek employment, at this age.

20. Another aspect which strikingly emerged on record is that the petitioner continued to work continuously for about 10 years. No doubt the engagement was on the basis of contracts Ex.R-1 to Ex. R-6 and it did stipulate that his services would come to an end automatically when the new buyer takes possession of the unit. There is no stipulation in the contract that the petitioner would be issued a notice before culmination of the contract. Though there was another stipulation, that the respondents could terminate the services of the petitioner even before the unit was taken over. The purposes of the protection envisaged under the various provisions qua "retrenchment" was that atleast the employee must have some time available at his disposal to search for alternate employment while he looks for a new employment. Retrenchment compensation was also envisaged so that he does not have to frequently approach the employer. It was basically not only as a reward for his previous service rendered to the employer but also sustenance to the worker for the period which may be spent in search for another employment. There was no provision on the said lines in the contract entered inter se the parties. In the present case the agreement is not denied though it is sought to be portrayed as a misrepresentation or fraud. Atleast the contract was on dotted lines and presumably the petitioner did not have much to say, and but to sign the same. This stipulation in the contract and the situation of the petitioner while entering into it was wholly incompatible to the notion of social justice, inasmuch as there is no statutory protection available to the workmen. The contract of service is unilateral in character and it could be described as a mere manifestation of the subdued wish of the workman to sustain his living at any cost. To this limited

extent there is discrepancy in the contract Ex. R-1 to Ex. R-6. No doubt the applicability of the Industrial Disputes Act vis-à-vis retrenchment came to be forestalled by the aforesaid agreements Ex. R-1 to Ex. R-6. However, the totality of circumstances discussed and the fact that the action of the respondents in terminating the services of the petitioner was almost analogous to the closing down of any undertaking and there being no stipulation on the contract compatible to the notions of social justice and statutory provisions of the Industrial Disputes Act. Further seeing to the fact that no scheme had been formulated by the respondent in respect of such workmen who had put in continuously long years of service with the corporation in looking after the taken over the unit it is in the interest of justice that some compensation is granted to the petitioner, even though he was not entitled to re-engagement. Had the workman being thrown out because of closure of an undertaking he would have been entitled to atleast a notice and compensation in accordance with the provisions of Section 25-F and compensation payable not exceeding average pay for three months for each year. Based on the aforesaid, seeing to the facts the petitioner had put in 15 years in service and even if an average for three months is paid to him as compensation, it would come to around Rs.67,500/- approx.. However, the respondents are burdened with the compensation of Rs.70,000/- as a composite whole. The respondent shall also make endeavour to frame certain rules either to absorb such workmen in the corporation on the basis of their seniority or to reinstatement than in another taken over unit as per their seniority.

21. The aforesaid issue is decided accordingly.

RELIEF

22. For all the reasons discussed hereinabove while dismissing the reference the respondents are burdened with compensation amounting to Rs.70,000/-, to the petitioner which shall be paid within a period of 90 days from the award, failing which the respondents shall be liable to pay interest @ 9% per annum from the date of award till the payment thereof. The respondents shall make an endeavor to frame a policy for absorbing such workmen in the corporation or re-engaging them in the other taken over unit in the State. Not only this the respondent Corporation shall re-engage the petitioner as and when a fresh hand is to be engaged in a taken over unit, as per the requirement of Section 25-H of the Act. With the aforesaid directions the reference is disposed of. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication and the file after completion be consigned to the record room.

Announced in the open court today the 2nd day of December, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 100/2007
Date of Institution : 30.9.2007
Date of decision : 6.1.2012

Shri Chuhan Singh S/o Shri Indru, R/o Village Dhar, P.O. Jai Devi, Tehsil Sunder Nagar,
District Mandi, H.P. . . *Petitioner.*

Versus

Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.

. . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Shyam Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Chuhar Singh So Shri Indru workman by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Mandi, H.P. w.e.f. 01-05-05 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. It is averred by the petitioner that he was engaged as a daily waged beldar by the respondent in the year 1998 and he worked as such till 2001. It is further averred by the petitioner that after his disengagement the petitioner had initially approached the Hon’ble Administrative Tribunal vide O. A. No.246/2002 whereby the Hon’ble Tribunal had directed the respondent not to disengage the petitioner. Thereafter the respondent had reengaged the petitioner during the pendency of the said original application, but thereafter the respondent had disengaged the services of the petitioner without any rhyme and reason and in derogation to the orders of the Hon’ble Tribunal.

3. It is further averred by the petitioner that the respondent had engaged persons junior to the petitioner. The petitioner thus prays for his reengagement with all consequential benefits.

4. The respondent while contesting the claim has averred that the petitioner had been engaged as a casual labourer to carry out forestry works which was seasonal in nature, but not for permanent work. The respondent denied that the petitioner was engaged as a beldar as there has no full time work available with the respondent. It is further averred by the respondent that the petitioner was initially engaged during the month of July, 1998 and he has worked till 2006. It is admitted that the petitioner had approached the Hon’ble Administrative Tribunal vide O.A. No. (M) 246/02 which was dismissed vide its order dated 19.7.1999 with the directions to the respondent to re-engage the petitioner as and when work would be available with the respondent.

5. It is further averred by the respondent that the petitioner has not completed 240 days in all the calendar year. The petitioner was engaged as casual labour for seasonal work and there was never any permanent work with the respondent. It was denied that junior persons had been retained by the respondents. The respondents thus pray for the dismissal of the claim.

6. While filing the rejoinder the petitioners controverted the averments in the reply and further reiterated those in the statement of claim.

7. I notice that on 17.6.2009 the following issues had come to be framed by my Ld. Predecessor:

1. Whether the services of the petitioner were terminated by the respondent w.e.f. 1.5.2005 . . . OPP.
2. If the above issue 1 is proved, whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to?"
3. Relief.

8. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No.2 : Yes

Relief. : Allowed as per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both the issues are being taken up together for discussion as they are correlated and intermingled.

10. The respondents have specifically raised the plea that the petitioner was a seasonal worker. He had been engaged for seasonal work which is available during the rainy and the winter season. It is further their case that the petitioner had not completed 240 days in every year.

11. The respondent has placed on record the mandays chart of the petitioner vide Exhibit RW1/A. A bare glance at the mandays show that the petitioner had worked for 31 days in the year 1998, 119 days in 1999, 307 days in 2000, 234 days in 2001, 250 days in 2002, 213 days in 2003, 85 days in 2004 and 112 days in the year 2005. The plea of a seasonal work is thus falsified by the mandays of the respondent themselves. Prior to his disengagement the petitioner worked in almost all the months in a year. A person having worked for more than 100 days during the major period of his engagement cannot be said to be a seasonal worker by any stretch of imagination.

12. Though the respondent dispute that the persons junior to the petitioner were ever retained by the respondents but the Divisional Forest Officer who has appeared as RW1 has categorically admitted that Phulvati who figures at serial no. 200 and Bhim Singh who figures at serial no. 155 in the seniority list Ex. PW1/D are shown to have been engaged on January, 2000 and January, 1999 and are still working with the respondent. The two were thus admittedly juniors to the petitioner. The ocular and documentary evidence both conclusively prove the same. The plea of seasonal work as already held above stand negated by the document produced by the respondents themselves. It has thus to be inferred that the respondent had failed to abide by the provisions of Section 25-G of the Act. It is by now well settled that for the invocation of the protection so envisaged by Section 25-G the requirement of having completed 240 days is not a condition precedent. In other words all workmen whether they have completed 240 days or not are entitled to the protection of the provisions of Section 25-G. In this behalf support can ably be drawn by the judgments of the Hon'ble Supreme Court in Central Bank of India vs. S. Satayam, 1996 (5) SCC 419 and Harjinder Singh vs. Punjab State Ware House Corporation, 2010 (3) SCC 192 and our own Hon'ble High Court in State of H.P. vs. Prem Lal 2010 (3) Him LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No. 3887/2011 decided on 3.6.2011).

13. It is further submitted by the respondent that the petitioner was continued upto 2006 and he was given preference for engagement after the year 2005 subject to availability of work and funds.

14. As per the testimony of the Divisional Forest Officer (RW-1) the seniority list of only those workmen are maintained who have completed more than 240 days. I am afraid the said procedure being adopted by the respondents is against the provisions of law, for if it is so the provisions of Section 25-G and 25-H of the Act cannot be followed. Both the provisions are mandatory and have to be followed strictly as is clear from the ratio of the judgments discussed above. Moreover this practice has led to the provisions (25-G & 25-H) being deprecated flagrantly. This procedure adopted by the respondent has resulted in the workmen being disengaged not in good faith, but in the colourable exercise of the employee's rights. It is further an exercise to employ workmen on casual and temporary basis while continuing them for years, with the object of depriving them of the status and privileges of permanent workmen. It can be nothing but an "unfair labour practice", as defined under Section (ra), read with the fifth schedule to the Act. The respondent had been recklessly doing so in the Sunder Nagar Division.

15. Consequently while allowing the reference the respondent is directed to re-engage the petitioner forthwith. He shall be entitled to continuity and seniority from the date of his illegal termination. As the petitioner has not worked with the respondent continuously during the said interregnum. Moreover, the petitioner has failed to discharge his initial onus of proving that he was not gainfully employed during his forced idleness no back wages are being awarded in favour of the petitioner. The issues are accordingly decided partly in favour of the petitioner.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondent is directed to re-engage the petitioner forthwith. The petitioner shall be entitled to continuity in service and seniority from the date of his illegal disengagement, though except back wages. The respondents shall not grant fictional breaks to the petitioner in the future. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room. Announced in the open Court today the 6th day of January, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
 TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 209/2007
Date of Institution : 3.12.2007
Date of decision : 30.11.2011

Shri Dev Raj S/o Shri Baripat Ram, R/o Village and Post Office Mumta, Tehsil and District Kangra, H.P. . . *Petitioner.*

Versus

The Conservator of Forests, Working Plan & Settlement, Shimla-2, H.P.

. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Shri N.L. Kaundal, AR
Shri Vijay Kaundal, Adv.
For the Respondents : Shri Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Dev Raj S/o Shri Baripat Ram workman by the Conservator of Forests, Forest Working Plan & Settlement, Shimla-171002 w.e.f. 22.12.2000, without complying with the provisions of the Industrial Disputes Act, 1947, is proper and justified? If not, what relief of service benefits and the amount of compensation the above aggrieved workman is entitled to?”

2. In pursuance to the reference it is averred by the petitioner that he was engaged by the respondent as a daily waged worker in February, 1998 and he worked under the control of DFO, Working Plan Division Dharamshala upto 15.11.1999. Thereupon his services were disengaged. The petitioner was constrained to file an O.A. No. (D) 325/99 before the Hon'ble Administrative Tribunal and on the basis of an order dated 24.3.2000 the petitioner came to be re-engaged by the respondent. The petitioner was again disengaged by the respondents in the month of June/July, 2000. Again O.A. No. (D) 495/2000 came to be filed by the petitioner and by virtue of an order passed by the said Tribunal the petitioner was again re-engaged on 9.11.2000. He thereafter worked till 22.12.2000 when his services were again dispensed with. The petitioner again filed an original application bearing O. A. No. (D) 554/2001. The disengagement of the petitioner (16.11.1999, June/July, 2000 and 22.12.2000) is stated to be illegal, unjust and arbitrary as no notice or charge-sheet had been served upon the petitioner and nor any retrenchment compensation had been paid to him as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. It is further stated by the petitioner that he had completed 240 days continuous service and as such the infraction of the provisions of Section 25-F renders his disengagement null and void.

4. It is further the case of the petitioner that one similar person Shri Kashmir Singh who had been working with the petitioner in the same Division at Dharamshala had also been terminated by the respondent. He too, had filed an O.A. No. (D) 106/2001 and had come to be reinstated by the respondent. He is still working with them. It is also averred by the petitioner that the respondents have retained persons junior to him in service and have also engaged fresh hands after his termination and as such the action of the respondent is also violative of the provisions of Section 25-G and 25-H of the Act.

5. Further, per the petitioner his original application No. 554/2001 had been dismissed on 13.10.2004 on the grounds of jurisdiction, with liberty to the petitioner to approach the competent forum and hence the present reference.

6. The petitioner thus prays for his re-engagement with all consequential benefits.

7. While contesting the claim the respondents have inter alia raised preliminary objections vis-à-vis maintainability and suppression of material facts.

8. On merits it is the case of the respondents that the services of the petitioner were disengaged on 22.12.2000 by giving one month's notice as contemplated under Section 25-F of the

Act along with the retrenchment compensation, but the petitioner had refused to accept the same. The respondents have annexed along with copy of the notice and the refusal thereto. Further, per the respondents, the petitioner had not completed 240 days in the preceding 12 months of his disengagement.

9. In respect of Kashmir Singh it is averred by the respondent that he was engaged on 27.12.1996 and had completed 240 days continuously for 10 years starting from 1997 to 2006. He was regularized in the year 2006 subject to the policy of the State.

10. It is further averred by the respondents that the services of the petitioner was disengaged on 22.12.2000 when the working plan division was wound up, after following the proper procedure, as per the Act. It is further submitted by the respondent that the work pertaining to a Working Plan Division are temporary and are in progress only till the preparation of the working plan. The preparation of Dharamshala Working Plan was completed during May, 2001, which necessitated the disengagement of the petitioner.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim. 12. I notice that on 3.6.2008 the following issues had been framed by my Ld. Predecessor:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation he is entitled to? . . OPR.
2. Whether the claim petition is not maintainable. . . OPR.
3. Whether the petitioner is guilty of suppressio veri . . OPR.
4. Relief.

13. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Partly yes

Issue No.2 : No

Issue No.3 : No

Relief : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

14. The simple case set up by the petitioner is that his disengagement w.e.f. 22.12.2000 was illegal and unlawful as no notice had been served to the petitioner, as contemplated under Section 25-F of the Act and neither any charge sheet had been served on him and nor any inquiry conducted against him before disengaging him. It is also sought to be portrayed that persons junior to the petitioner had been retained and even fresh hands have been engaged after his disengagement and as such the action of the respondent is violative of the provisions of Section 25-G and 25-H of the Act.

15. Per contra, the respondents are stated to have issued retrenchment notice under Section 25-F of the Act on 18.11.2000 doing away with the services of the petitioner w.e.f. 19.12.2000. The

retrenchment compensation amounting to Rs.1530/- was also stated to have been sent along with, by way of cheque, vide Ex.RW1/B. Over and apart it is the specific contention of the respondents that the services of the petitioner was terminated on 22.12.2000 when the working plan division had been wound up and proper procedure under the Act had been resorted to while disengaging the services of the petitioner. The respondents have further averred that though the petitioner had not completed 240 days in the preceding 12 months of his disengagement, yet a notice was issued to him. The work pertaining to the work plan divisions are stated to be temporary in nature and remained in existence only till the preparation of the working plans of the concerned division.

16. The retrenchment notice Ex. RW1/B also categorically corroborates the fact that since the working plan has been submitted the division was being closed and as such the services of the petitioner would no longer be required. The Chief Conservator of Forest Working Plan and Settlement, Mandi who has appeared as RW1 has also deposed on the same lines. As per Ex. RW1/C it is apparent that the petitioner had refused to receive the retrenchment compensation, so sent by the respondent.

17. The fact does emerges from the evidence on record is that the disengagement of the petitioner was necessitated because of the wounding up of the working plan division. More particularly, as the working plan had been submitted by the respondent. The respondent thus was very much within its right to have exercise the option contemplated by Section 25-F of the Act and the respondents had as per Ex. RW1/B issued retrenchment notice to the petitioner.

18. The Ld. Authorized Representative of the petitioner has further strenuously argued that the respondents had retained persons junior to him and also engaged fresh hands after the disengagement of the petitioner and as such the action of the respondent is violative of the provisions of Section 25-G and 25-H of the Act. In this behalf much stress has been laid on Ex. D1 which is a seniority list of workmen prepared by the respondent. The Chief Conservator of Forest Shri Chandresh Sharma while appearing as RW1 has admitted that Ex. D1 has been prepared by the department. The witness has further admitted that Sunder Singh reflected at serial No.1 was working with the respondent on 22.12.2000 and even one Tek Singh reflected at serial No.3 was engaged on 18.11.2002 and the said workmen is still working with the respondent. He has also admitted that when Tek Singh was engaged no notice was issued to the petitioner for re-engagement. The witness has further tried to portray that the workmen reflected in Ex. D1 were posted in Kangra Division. However, the witness has deposed that Ex. D1 is a seniority list pertaining to the Dharamshala Working Plan Division. He has also admitted that Kashmir Singh was initially engaged at Dharamshala and is presently working at Shimla. The mandays of Kashmir Singh has also been placed on record vide Ex. RW1/F.

19. As per the evidence on record Kashmir Singh was engaged in 1996 and he has continuously worked (with 240 days in each calendar year till the year 2006).

20. No doubt, since the working plan had been submitted the respondents were within there right to have retrenched the services of the petitioner, but the same was liable to be done strictly on the principle of 'last come first go', as envisaged under Section 25-G of the Act. The Chief Conservator of Forest, while appearing as RW1 has admitted that Ex. D1 pertains to the entire Dharamshala working plan division. If that was so, it clearly emerges from the seniority list that Sunder Singh was junior to the petitioner as he was engaged for the first time on 18.11.1998 while one TekSingh had been engaged for the first time on 18.11.2002. If that was so the action of the respondents in disengaging the services of the petitioner was not strictly in compliance with the principle of 'last come first go' and nor the provisions of Section 25-H had been followed while engaging fresh hands. Both the provisions are mandatory in nature. The non compliance of mandatory provisions of the Act is thus fatal to the respondent. Not only this by now it is fairly well

settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can ably be drawn by the judgments of the Hon'ble Supreme Court in Central Bank of India vs. S. Satayam, 1996 (5) SCC 419 and Harjinder Singh vs. Punjab State Ware House Corporation, 2010 (3) SCC 192 and our own Hon'ble High Court in State of H.P. vs. Prem Lal 2010 (3) Him LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No. 3887/2011 decided on 3.6.2011). To this limited extent the disengagement of the petitioner is illegal. 21. The respondent while disengaging the petitioner has not followed the principle of 'last come first go'. Even if the working plan had been submitted the petitioner based on his seniority should have been offered employment in some other part of the working plan division. This gains significance because even as per RW1 the seniority list of workmen is maintained at divisional level. The respondents were duty bound to have maintained the divisional level seniority list and thereupon resorted to retrenchment strictly on the basis of the seniority. A bare glance at Ex. D1 shows that such procedure was not followed by the respondent. To this limited extent the disengagement of the petitioner is bad, being violative of the provisions of the Section 25-G and 25-H of the Act Consequently the action of the respondents is set aside. The petitioner is directed to re-engage forthwith. Seeing to the peculiar circumstances of the fact discussed hereinabove the petitioner shall not be entitled to any back wages, more particularly since the working plan vis-à-vis Dharamshala had already been submitted and thereupon the petitioner otherwise had to be stationed at some other place in the division. The issue is accordingly decided partly in favour of the petitioner and against the respondent.

Issue No. 2 :

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

23. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

RELIEF

24. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall not be entitled to back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room. Announced in the open Court today the 30th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,**

DHARAMSHALA, H.P.

Ref No. : 668/2008

Date of Institution : 29.10.2008

Date of decision : 7.12.2011

Shri Devi Lal S/o Shri Mangal Chand, R/o Village Parmas, P.O. Killar, Tehsil Killar,
District Chamba, H.P. *. .Petitioner.*

Versus

The Horticulture Development Officer, Killar at Pangri, Distt. Chamba, H.P.

. . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Devi Lal S/o Shri Mangal Chand by the Horticulture Development Officer, Killar at Pangri, Distt. Chamba, H.P. w.e.f. 1.1.2007 without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”

2. The short and simple case set up by the petitioner in the statement of claim is that the petitioner was working as a daily wager with the respondent since March, 2000 and he continued working as such till December, 2006 continuously and uninterruptedly but his services were dispensed with without issuing any notice and that too orally.

3. It is also averred by the petitioner that the other daily wagers engaged along with the petitioner were allowed to continue but his services were dispensed with orally and without any notice. One Chain Singh was also allowed by the department to work on other small projects by allowing/awarding him work. The petitioner had also represented his case before the Director, Horticulture but no avail. The petitioner thus prays for his re-engagement with all consequential benefits.

4. The respondents while contesting the claim have raised preliminary objections vis-à-vis maintainability and the claim being hit by the vice of delay and laches.

5. On merits it is not denied that the petitioner did not work with the respondent as a daily paid labourer from March, 2000 to December, 2006. The respondents have annexed the details of the mandays of the petitioner along with their reply. It is denied that four persons other than the petitioner were regularized by the department, who had been appointed along with the petitioner.

6. It is further averred by the respondents that the Horticulture field work is only seasonal in nature and workmen are utilized as per the availability of work and funds. The services of the petitioner was dispensed with, for want of work and funds and thereafter the department has not engaged any other labour. Chain Singh is stated to have not been on the rolls of the department after 2004. The respondents thus prays for the dismissal of the claim.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. On 25.3.2011 the following issues had been framed by this Court:

1. Whether the termination of the petitioner w.e.f. 1.1.2007 is violative of the provisions of Section 25-F of the Industrial Disputes Act, as alleged. If so, what relief the petitioner is entitled to? . . .OPP.
2. Whether the reference is not maintainable, as alleged. If so, to what effect. . . .OPR.
3. Whether the reference is hit by the vice of delay and laches, as alleged. If so, to what effect? . . .OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief. : Allowed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

10. Admittedly the petitioner had been working with the respondents from March, 2000 till December, 2006. A perusal of the mandays of the petitioner placed on record vide Ex. RW1/A shows that the petitioner had been working for more than 180 days in all the calendar years. In fact in the year 2001, 2002, 2003 and 2006 the petitioner has put in more than 300 days.

11. Though the respondents have pleaded that Horticulture field work is only in seasonal nature, specially in Pangri tribal area but the mandays on record vide Ex.RW1/A shows that the petitioner has not only worked for more than 180 days but has worked for even more than 300 days in many calendar years. The plea of seasonal work thus is falsified by the mandays placed on record by the respondents themselves. It is also the claim of the respondents that the services of the petitioner was dispensed with for want of work and funds. No evidence has been led on this behalf by the respondents that the disengagement of the petitioner was necessitated for want of funds or work.

12. Even assuming it was so and the same being a good reason for retrenchment the respondents were duty bound to have issued a notice under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) while dispensing with the services of the petitioner.

He had admittedly worked continuously, as defined under Section 25-B of the Act and had been also in continuous service for not less than one year under the respondents. Even if the work and funds were not available the respondents were duty bound to have followed the mandate of Section 25-F. Admittedly no notice had been issued to the petitioner and the said fact is corroborated by the Incharge, Horticulture/Agriculture Sub Division Pangi who has appeared as RW1. The disengagement of the petitioner is thus illegal, unjust being against the statutory and mandatory provisions of Section 25-F of the Act. The disengagement of the petitioner w.e.f. 1.1.2007 is thus violative of the provisions of Section 25-F of the Act. Consequently the disengagement of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement, though without back wages. The issue is thus decided in favour of the petitioner and against the respondents.

Issue No. 2 :

13. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3 :

14. Admittedly the petitioner was terminated in the year, 2007 and the failure report was submitted by the conciliation officer on 15.10.2007. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. It cannot be said by any stretch of imagination that the claim was stale or that the petitioner was sleeping over his rights in any manner. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act.

RELIEF

15. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The disengagement of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 7th day of December, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Dharamshala, H.P.

availability of work. The petitioner is stated to have not completed 240 days in any of the years. It is further submitted by the respondent that the petitioner was disengaged temporarily w.e.f. 21.9.2009 by way of a notice, which was acknowledged by the petitioner and which has been annexed along with as Annexure R1. He was ensured at the time of disengagement that as and when work is available he would be called back for work. Thereafter the petitioner is stated to have not responded to the notices of the Range Officer, Jogindernagar.

6. One Shri Lov Kumar is stated to be senior to the petitioner and was regularized as forest worker in compliance to the orders of this Court passed in reference no.278/2001. The respondent further submitted that the petitioner cannot claim parity with other persons mentioned in the para as the petitioner himself did not respond to the notice issued by the Range Officer, Jogindernagar. The respondent thus prays for the dismissal of the claim.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim. 8. On 26.4.2011 the following issues had been framed by this Court:

1. Whether the termination of the petitioner w.e.f. Sept., 2009 is violative of the provisions of Section 25-F, 25-G & 25-H of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the reference is not maintainable, as alleged. If so, to what effect . . . OPR.
3. Whether the reference is hit by the vice of delay and laches, as alleged. If so, to what effect? . . . OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 :	Yes
Issue No.2 :	No
Issue No.3 :	No
Relief. :	Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

10. Admittedly the petitioner had been working with the respondent since the year 1998. Though as per the respondents the petitioner had not completed 240 days in the preceding 12 months of his disengagement but a notice Ex. RW1/A had been issued to the petitioner disengaging his services w.e.f. 21.9.2009. No doubt the petitioner had not apparently completed 240 days in the preceding 12 months of his disengagement as per the mandays on record. Once the respondent had chosen to issue the notice for retrenchment it had to be issued as per the requirement of the provisions of Section 25-F. The purported notice (Ex. RW1/A) is not in consonance with the requirement of Section 25-F.

11. Not only this, even assuming if no notice under Section 25-F was liable to be issued it has explicitly come to the fore, as is clear from the seniority list placed on record that persons

junior to the petitioner have been retained by the respondent. The persons reflected after serial No.10 of the seniority list are all junior to the petitioner. In fact some of them namely Ramesh Chand, (serial No.12), Sarpa Devi, Jagdish Chand and Nirmla Devi have been engaged after the disengagement of the petitioner. They are all shown to have completed more than 240 days. The purported notice issued to the petitioner vide Ex. RW-1/A was issued for want of work. In case the respondent was to resort to retrenchment it was the last person to have been engaged, who was to be retrenched. The said principle was not followed by the respondent. By now it is fairly well settled that even if a workman has not completed 240 days in the preceding 12 months of his disengagement the protection of Section 25-G and 25-H of the Act are still available to him. Even if the petitioner had not completed 240 days he was entitled to the protection of Section 25-G and 25-H of the Act. In this behalf support can ably be drawn from the judgments of the Hon'ble Supreme Court titled as Central Bank of India vs. S. Satayam, 1996 (5) SCC 419 and Harjinder Singh vs. Punjab State Ware House Corporation, 2010 (3) SCC 192 and our own Hon'ble High Court in State of H.P. vs. Prem Lal 2010 (3) Him LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No. 3887/2011 decided on 3.6.2011).

12. It is thus apparent from the record and discussion held hereinabove that the services of the petitioner was disengaged in gross violation of the provisions of the Act and more particularly Section 25-G and 25-H. Though the respondents have tried to portray that a notice was issued to the petitioner to rejoin vide Ex. RW1/B, but admittedly the same had been received by the brother of the petitioner, when the petitioner was stated to have gone for work to Manali. It cannot be deemed to be proper service. Even otherwise after his disengagement it could not be expected that a person would wait for the offer of re-engagement. He had to make some provision for his bread and butter to sustain himself. The other notice Ex. RW1/C issued on 11.1.2011 having been issued after the present proceeding had begun cannot be said to be bonafide. Had it been so the respondents could have apprised this Court and sought the direction to the petitioner to rejoin pending the reference. It is also not clear from the aforesaid document how and when it had been served upon the petitioner. The disengagement of the petitioner is thus set aside. The respondents are directed to re-engage the petitioner forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances on record no back wages are being awarded to the petitioner. The issue is decided accordingly.

Issue No. 2 :

13. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3 :

14. Admittedly the petitioner was terminated in the year, 2009 and the failure report was submitted by the conciliation officer on 8.4.2010. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. It cannot be said by any stretch of imagination that the claim was stale or that the petitioner was sleeping over his rights in any manner. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act.

RELIEF

15. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to

Announced in the open Court today the 15th day of December, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Dharamshala, H.P.

Ref No. : 223/2010
Date of Institution : 4.8.2010
Date of decision : 15.12.2011

Versus

The Divisional Forest Officer, Forest Division, Karsog, District Mandi, H.P. . . Respondent.

For the Petitioner : Sh. N.L. Kaundal, AR,
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Devi Singh S/o Shri Keshav Ram by Divisional Forest Officer, Forest Division Karsog, District Mandi, H.P. w.e.f. July, 2009 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, whereas junior to him engaged continuously by the above employer without following the principle of ‘Last Come First Go’ is legal and justified? If not, to what back wages, seniority, service benefits and relief the aggrieved workman is entitled too?”

2. It is averred by the petitioner in the statement of claim that he was initially engaged as a forest worker on muster roll basis in the year 1995 and he worked continuously till the year 2002 and had also completed 240 days in each calendar year.

3. Thereafter his services were disengaged in May, 2003.

4. The petitioner was re-engaged in December, 2005. In the year 2006 the respondents had engaged the petitioner only for 8 days. In the year 2008 the respondent had issued muster rolls

for 86 days and in the year 2009 he was issued muster rolls only for 45 days. Per the petitioner the respondent had disengaged the petitioner intentionally and was not allowed to complete 240 days between 2003 and 2010.

5. The petitioner had raised an industrial dispute on 24.5.2008 and during the pendency of the said dispute the respondent had re-engaged the petitioner in the year 2008 and he thereupon worked till 31.3.2010. The services of the petitioner was again disengaged w.e.f. 1.4.2010. Even while re-engaging the petitioner on 6.2.2008 his services have been disengaged on 8.5.2008. Further, per the petitioner he had completed 240 days in all the years from 1995 to 2002.

6. It is further stated by the petitioner that the persons junior to him have been retained in service by the respondent namely Khub Chand, Khem Singh, Yash Pal, Kehm Raj, Tara Chand, Sher Singh etc. and as such the action of the respondent in disengaging the petitioner is violative of the provisions of Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner thus prays for his re-engagement with all consequential benefits.

7. While contesting the claim the respondents have inter alia raised preliminary objections vis-à-vis maintainability, delay and laches, concealment of material fact and that the claim was premature.

8. On merits it is the case of the respondent that the petitioner had worked intermittently with the respondent from January, 1995 to February, 2010. The mandays of the petitioner have been placed on record vide Annexure R-1. Further, per the respondent even in May, 2003 the services of the petitioner were never dispensed with by the respondent. In fact the petitioner had himself abandoned job and never reported for work till January, 2008, barring a few days in November, 2006. It is denied that the fictional breaks were given to the petitioner. The petitioner is stated to have worked for 8 days in 2006 and 86 days in the year 2008.

9. It is averred by the respondent that the reference in question pertains to the termination of the petitioner w.e.f. July, 2009, whereas in the said months the petitioner was on the rolls of the respondent. The petitioner is debarred from raising his alleged termination w.e.f. 1.4.2010. Per the respondent the petitioner had abandoned job even in February, 2010.

10. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

11. On 24.3.2011 the following issues had been framed by this Court:

1. Whether the termination of the petitioner w.e.f. July, 2009 is violative of the provisions of Section 25-F & 25-G of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the reference is not maintainable for the claim being premature and having also become in fructuous, as alleged. If so, to what effect . . . OPR.
3. Whether the reference is hit by the vice of delay and laches, as alleged. If so, to what effect? . . . OPR.
4. Relief.

12. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Partly yes

Issue No. 2 : No

Issue No. 3 : No

Relief. : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

13. Both the issues are being taken up together for discussion as they are correlated and intermingled.

14. Admittedly the reference sent to this Court for adjudication pertains to the disengagement of the petitioner w.e.f. July, 2009, but both the parties have pleaded and effectively proved on record that the services of the petitioner came to an end after February, 2010. The only point of dispute being that after February, 2010, per the petitioner he was disengaged illegally, while as per the respondent the petitioner had abandoned job. The respondent though have raised a plea that the claim of the petitioner is premature and in fructuous as the petitioner was already on the rolls of the respondent in July, 2009 but as per the mandays placed on record by the respondents themselves vide Ex. RW1/A, admittedly the petitioner was on the rolls of the respondents till February, 2010. It is thus more than apparent that the petitioner was on the rolls of the respondent till February, 2010. Not only this the perusal of the mandays (Ex. RW1/A), placed on record by the respondent also categorically shows that admittedly the petitioner had completed more than 240 days in the preceding 12 months of his disengagement. The petitioner had raised an industrial dispute in October, 2007 as is clear from Ex. RW-1/B, followed by a reminders in 2008 (Ex. RW-1/C) also. Thereafter it cannot be said that the reference is premature or has become infructuous, merely because the petitioner worked thereafter till February, 2010.

15. Per the respondents the petitioner had abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job.

16. Apart from the bald statement of Divisional Forest Officer who has appeared as RW1 there is no documentary evidence on record to substantiate the plea of abandonment. No contemporaneous document has been placed on record to prove the plea of abandonment, so raised by the respondent. The respondent has failed to prove the plea of abandonment. It has thus to be presumed that the petitioner had been disengaged. Admittedly he had completed 240 days in the preceding 12 months of his alleged disengagement. The petitioner thus was entitled to a notice under Section 25-F of the Act, which admittedly had not been issued. The disengagement of the petitioner thus was bad in the eyes of law.

17. The perusal of the mandays Ex. RW1/A further shows that admittedly after his initial engagement in 1995 the petitioner had continuously worked for more than 240 days in all calendar years till the year 2002. Apparently in May, 2003 the petitioner was disengaged but the reference in hand pertains to the year 2009. The perusal of the mandays further shows that the petitioner did work for few days in the year 2006 and thereafter in the year 2007 vide Ex. RW1/A. The petitioner had raised an industrial dispute. The Ld. Authorized Representative for the petitioner would thus contend that during the course of conciliation, so raised vide Ex. RW1/B the petitioner had come to be re-engaged but still the respondents intentionally did not provide muster roll to the petitioner

depriving him the opportunity to completed 240 days in any calendar year even thereafter. He has further reliance upon the judgment of our own Hon'ble High Court in Smt. Pushap Lata vs. State of Himachal Pradesh and Others. (Latest HLJ 2010 (HP) 950), to contend that since juniors to the petitioner were retained and since his disengagement was illegal and the petitioner had even been reengaged in the year 2007 the non regularization of the petitioner was illegal more particularly when his juniors had been regularized. The Ld. Authorized Representative for the petitioner contends that the seniority of the petitioner has to be reckoned from the year 1995. Per contra the Ld. Dy. D.A. has urged that since there was a break of about four years between 2003 and 2007 the petitioner is not entitled to any such relief. Having considered the contentions raised by the parties and going through Ex. RW1/D the mandays of the other daily wagers it is clear that other workmen who were engaged after the petitioner have been allowed to continue for more than 240 days in all calendar years. In fact three of them have been since regularized. Some of the workmen were engaged for the first time in the year 2002. No doubt the petitioner too had completed 240 days continuously till the year 2002 but the fact remains that the petitioner did not work with the respondent after May, 2003 and even as per Ex. RW1/B the dispute was raised by the petitioner for the first time in the year 2007. Certainly there is no reason for such a long break in the service of the petitioner. The present reference however does not pertain to his disengagement after May, 2003.

18. Thus even while setting aside the disengagement of the petitioner w.e.f. February, 2010 the respondents are directed to re-engage the petitioner forthwith. He shall be entitled to seniority and continuity from the date of his illegal disengagement and that too without back wages. Both the issues are thus decided in favour of the petitioner and against the respondent.

Issue No. 3:

19. Admittedly the petitioner was terminated in the year, 2009 and the failure report was submitted by the conciliation officer on 23.2.2010. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. It cannot be said by any stretch of imagination that the claim was stale or that the petitioner was sleeping over his rights in any manner. There is no evidence as to how the claim was timebarred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act.

RELIEF

20. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 15th day of December, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 98/2010

Date of Institution : 23.4.2010

Date of decision : 25.11.2011

Shri Dharam Chand S/o Shri Senser Chand, R/o VPO Purthi, Tehsil Pangi, District
Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P.
. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Dharam Chand S/o Shri Senser Chand by The Executive Engineer, HPPWD Division Pangi at Killar, District Chamba, (H.P.) w.e.f. Year, 2004 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that he was appointed as a beldar by the respondent in the year 1997 in HPPWD Division Pangi at Killar. Thereafter he worked continuously and uninterruptedly till the year 2005, when his services were terminated orally, without any notice, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas his services were disengaged.

4. The petitioner thus contends that his termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of his termination.

5. The petitioner thus seeks his re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections vis-à-vis maintainability, petition suffers from the vice of delay and laches, estoppels and the petitioner has concealed the material facts.

7. On merits it is the case of the respondent that the petitioner had been continued till the year 2004 and thereafter the petitioner had abandoned his job and thereby also lost his seniority in

this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder not filed. On 15.7.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. September, 2004 is violative in the provisions of Section 25-F and 25-G of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto. . . OPR.
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, its effect thereto. . . OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in September, 2004. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled *State of H.P. vs. Bhatag Ram and Anr.* (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as his own witness has deposed that certain juniors to him were retained by the respondent. The respondents though have denied that the juniors were

retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, he was entitled to the protection of provisions of Section 25-G of the Act and the respondents was duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as State of H.P. vs. Prem Lal 2010 (3) Him. LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

Issue No. 2:

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3:

15. No doubt the petitioner was terminated in the year, 2004 and the failure report was submitted by the conciliation officer on 21.5.2009. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay

and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years....."

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Dharamshala, H.P.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 46/2010
Date of Institution : 23.4.2009
Date of decision : 25.11.2011

Shri Faqir Chand S/o Shr Maya Ram, R/o village Kariyunikothi, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Faqir Chand S/o Shri Maya Ram, daily wage beldar by The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P.

w.e.f. October, 2006 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?"

2. The petitioner has averred in the statement of claim that he was appointed as a beldar by the respondent in the year 1989 in I&PH Division Pangi at Killar. Thereafter he worked continuously and uninterruptedly till the year 2006, when his services were terminated orally, without any notice, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas his services were disengaged.

4. The petitioner thus contends that his termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of his termination.

5. The petitioner thus seeks his re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections vis-à-vis maintainability and the reference being hit by the vice of delay and laches.

7. On merits it is the case of the respondent that the petitioner had been continued till the year 2007 and thereafter the petitioner had abandoned his job and thereby also lost his seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 18.3.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. Oct. 2006 is violative in the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto. . . OPR.
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, its effect thereto. . . OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief. : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in September, 2006. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled *State of H.P. vs. Bhatag Ram and Anr.* (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as his own witness has deposed that certain juniors to him were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, he was entitled to the protection of provisions of Section 25-G of the Act and the respondents was duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as *State of H.P. vs. Prem Lal* 2010 (3) Him. LR 1363 and *State of H.P. & Ors. vs. Chet Ram* (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

Issue No. 2:

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3:

15. No doubt the petitioner was terminated in the year, 2006 and the failure report was submitted by the conciliation officer on 12.5.2009. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 124/2004

Date of Institution : 27.7.2004

Date of decision : 31.12.2011

The General Secretary, Kol Dam Karamchari Sangh (BMS) un-registered union, VPO
Harnoda, District Bilaspur, H.P. . . *Petitioner.*

Versus

1. M/s. NTPC Kol Dam, Barmana, District Bilaspur, H.P.
2. M/s. Italian Thai Development Public Company Ltd. Site Office Village Kyan, P.O.
Salapar, District Mandi, H.P. . . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondents : Sh. Hem Raj Sharma, AR
: Sh. K.K. Sharma, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the demands raised by way of demand notices dated 12.5.2004 and 31.5.2004 (copy enclosed) by the General Secretary, Kol Dam Karamchari Sangh (BMS) un-registered union before the management of M/s. NTPC Kol Dam, Project and M/s. Italian Thai Development Public Company Ltd. are legal and justified? If yes, what benefits and from which date the workmen of M/s. Italian Thai Development Public Company Ltd. are entitled to?”

“Whether the strike w.e.f. 14.7.2004 during the course of conciliation proceedings resorted by the workmen of M/s. Italian Thai Development Public Company Ltd., contractor of M/s. NTPC Kold Dam Project under the banner of un-registered union titled Kol Dam Karamchari Sangh (BMS) in support of their demands raised vide demand notices dated 12/5/2004 and 31/5/2004 is legal and justified? If yes, to what wages & relief the workmen on strike are entitled to? If not, what are its legal effects on striking workmen?”

2. In furtherance to the reference it is pleaded by the union i.e. the Koldam Karamchari Sangh (BMS) is working under the banner of Bhartiya Mazdoor Sangh Himachal Pradesh (Central Trade Union) and has been authorized by the Union vide its resolution dated 8.8.2005 to file the present claim.

3. The Mazdoor Sangh had submitted a demand charter to the respondent management including the NTPC wherein 11 demands had been raised by the Sangh vide two demand notices dated 12.5.2004 and 31.5.2004. During the course of conciliation demands no. 1,2,5,6,7 and 9 raised vide demand notice dated 12.5.2004 had been discussed and settled amicably. The other demands were not acceded too by the respondent management.

4. The grievances of the Sangh raised vide the demand charters were that the management was not providing medical allowance to the workmen working in the Kol Dam Project on the pattern of Government employees working in H.P. It is also averred that one M/s. MCM Services Private Ltd. a Sub Contractor of the respondent Italian Thai Development Public Company for short (ITDPC) has been giving medical allowance to his employees @ 8.33 per cent of the basic salary but the ITDPC was not extending such benefits to its employees. The workmen of the ITDPC are also entitled to the same benefits which are being paid by its sub contractor M/s MCS Services Private Ltd.. The respondent ITDPC was also not engaging the land oustees and nor any preference was being given to the oustees by the respondent.

5. The other grievance of the union were that the workmen serving in Kol Dam Project under the respondent be paid pay scale on the basis of Central Govt. Employees/State Govt. Employees category wise, or the ITDPC pay remuneration as per its principal employer i.e. NTPC. The ITDPC which is a contractor of the NTPC was also thus liable to pay the scales of the principal employer.

6. One of the other demand of the union was that initially ITDPC was paying 60% project allowance while its sub contractor M/s MCM was paying basic pay plus project allowance @ 50%, difficulty allowance @ 20%, Food allowance @ 10%, medical allowance @ 8.33% and washing allowance @ 5%. The respondent no.1 however was only paying project allowance of 60% along with difficulty allowance of 20%, which too was discontinued during the pendency of the reference.

7. In the supplementary demand charter dated 31.5.2004 the union has raised demand vis-à-vis non grant of casual leave, sick leave, earned leave and other national and festival holidays to its employee working in the project. The respondents are stated to be covered under the Company's Act and as such was liable to grant the said benefits under the said Act and even the HP Industrail Establishment Act, 1969. The union further averred that the workmen were also entitled to bonus as per the requirement of the Payment of Bonus Act, 1965.

8. It is further averred by the union that during the pendency of the present proceedings certain office bearers of the union including one Desh Raj Thakur, President, Desh Raj Kaundal, General Secretary, Khazana Ram, Vice President, Amrit Chand, Cashier and other members of the union had been retrenched illegally by the ITDPC thereby violating the provisions of Section 25-F of the Act. The retrenched employees be ordered to be reengaged with full back wages. It is further averred by the union that thereafter M/s. ITDPC and M/s MCM Services Private Ltd. has engaged two labour supply contractor namely Sh. Ajay Kumar Sood and Uday Raj and all the retrenched workmen were even transferred on their rolls.

9. The petitioner union thus prays that the respondent management and its sub contractor be directed to pay the same allowances to the workmen as were being given to them before 19th August, 2004. The retrenched employees be directed to be re-engaged along with full back wages and interest @ 12%. The respondent ITDPC be directed to pay the workmen at par with the employees of the NTPC (Respondent No.2) and they be directed to give all benefits to the workmen like earned leave, casual leave, sick leave and other national holidays and the respondent be further directing to pay bonus to all the workmen.

10. While contesting the claim both the respondents i.e. NTPC and the ITDP have filed separate replies.

11. The respondent no.1 i.e. M/s. ITDPC has raised preliminary objections that the order of reference is bad in the eyes of law and as such is not maintainable. More particularly because the

Kol Dam Karamchari Sangh which seeks to represent the workmen employed by the replying respondent has no locus standi to espouse the cause as it is not a registered trade union. It is further averred by the respondent that union has raised new grounds other than the demands raised in their demand notices.

12. On merits it is not denied that the Kol Dam Karamchari Sangh is a union and working under the banner of Bhartiya Mazdoor Sangh. It is admitted that some demand had been raised by the union. It is also admitted that demands no. 1, 2, 5, 6, 7 and 9 have been amicably settled. The respondent is stated to be paying wages to the workmen as per the Minimum Wages Act. The respondents is stated to be running hospital facility at the site for the welfare of the workmen. The respondent is stated to be further giving preference to the oustees as per the list supplied by the NTPC. The remuneration being given to the workmen is equal to the rates approved by the H.P. Government. The workmen are stated to be getting allowances as permissible under the labour laws. The retrenched employees are further stated to have been re-engaged. The rest of the contents are denied.

13. The respondent No.2 i.e. M/s. NTPC has also raised preliminary objections vis-à-vis maintainability and locus standi and that the union is not a registered trade union. Like the respondent no.1 it is averred by the replying respondent that the union has raised new grounds other than those raised in the demand notices. It is however further averred by the respondent no.1 that the relationship between the two respondents is that of a principal and a contractor and so far as the requirement of the Contract Labour (Regulations and Abolition) Act 1970 is concerned the duties of the principal employer haven been incorporated in Section 16, 17, 18, 20 and 21. If the demand notice is seen, not even a single requirement has been cast upon the principal employer under the Act and therefore the union is estopped to implead the NTPC as a party.

14. On merits it is the contention of the replying respondent No. 2 (NTPC) that it mainly deals in the generation of power and in order to achieve this end they have entered into an agreement with the respondent no.1 after inviting a global quotations/tenders. The respondent no.1 (i.e. ITDPC) has been engaged to complete the contract job on or before the year 2008. The respondent no.1 has engaged its own labour force after having obtained a licence under Section 12 and 13 under the Contract Labour (Regulations and Abolition) Act and before awarding the contract, the answering respondent also got itself registered under Section 7, as is required under the said Act. The respondent no.2 is fully discharging its liabilities as provided under Section 20 and 21. But the respondent no.1 is employing the workers/employees and is itself responsible for their conduct. The contract awarded to the respondent no.1 is time bound and the stipulated period being the year 2008. The respondent No.1 has been unnecessarily arrayed as a party.

15. It is also averred by the respondent No.2 that the contract labourers cannot claim equal pay for equal work and equal status with the regular employees employed by the principal employer. However the respondents do not have workmen doing same and similar job as that of the union workers. Even as per the respondent no.2 the demand nos. 1, 2, 5, 6, 7 and 9 have been amicably settled. The demand nos. 3 and 10 pertain to the respondent no.1. The demands raised vide demand notice 31.5.2004 pertain to the respondent no.1, however some of them are statutory in nature and thus can hardly be terms to be demands. The respondent no.2 also thus prays for the dismissal of the claim.

16. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

17. I notice that on 27.10.2006 the following issues had been framed by my Ld. Predecessor:

1. Whether the demand raised by the petitioner is tenable or not? . . . OPP.
2. Whether the workers strike w.e.f. 14.7.2004 during the pendency of the conciliation proceedings is legal, justified? . . . OPP.
3. If the above issue is in affirmative to what benefits the petitioner is entitled to? . . . OPP.
4. Whether the reference is maintainable before this Tribunal? . . . OPR.
5. Whether the petitioner union has a locus standi? . . . OPR.
6. Relief.

18. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Partly yes
 Issue No.2 : No
 Issue No.3 : Allowed partly
 Issue No.4 : Yes
 Issue No.5 : Yes
 Relief. : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

Issues No. 4 and 5:

19. Before advert to the factual matrix of the reference it would be relevant to first advert to the objections raised by the respondent vis-à-vis the maintainability and locus standi, so raised by them. The Ld. counsel for the respondent no.2 has contended that the union was no locus standi to espouse the dispute as the Sangh was not authorized to agitate the matter and even the mere association of the respondent No.2 in the conciliation proceedings is not sufficient to hold that the petitioner union was entitled to raise the present dispute. It is further averred by the Ld. counsel that the union was not competent to raise the present dispute as it was not authorized by any resolution of the Union nor any resolution has been placed on record to substantiate the same. The Ld. counsel for the respondent has also sought support from the judgment of the Hon'ble Madras High Court titled as Working Journalists vs. The Hindu reported in AIR 1961 Madras 370 and a judgment of the Hon'ble High Court of Calcutta titled as Deepak Industries Ltd. vs. State of West Bengal and Ors. (1975 (i) LLJ 293) Calcutta.

20. As per evidence on record initially the petitioner union was unregistered union which has now since been registered. Admittedly two demands charter had been issued by the petitioner union dated 12.5.2004 (Ex. PW1/N) and 31.5.2004 (Ex. PW1/M). Even as per RW3 on 23.7.2004 conciliation proceedings were conducted by the Joint Labour Commissioner between Kol Dam Karamchari Sangh (BMS) between the parties, as per the list Ex. RW3/A. The perusal of the list shows that during conciliation apart from the Organizing Secretary BMS and six other workmen including General Secretary of the Union and two representatives of the NTPC (respondent No.1) and two of the ITDP (respondent no.2) were also present.

21. The real scope of adjudication by this Court keeping in view the provisions of the various sections more particularly Sections 10, 15 and 17A clearly provide that any industrial

dispute preferred to this Court for adjudication continues once it is referred and it retains its character as such it does not effect the jurisdiction of this Court to proceed and make an award on the industrial dispute preferred to it. This is the real scheme and true scope of the various provisions of the Act. Even the judgment of the Working Journalists of the Hindu preferred to by the Ld. counsel for the respondent clearly espouses so, I quote;

“.....Though the definition of an industrial dispute does not in so many words state that a dispute or a difference between an employer and an individual employee of his in connection with his employment or the conditions of labour of any person is not within its scope, it is well settled that it is only a collective dispute that can constitute an industrial dispute: A collective dispute does not of course mean that all the workmen or a majority of them of the establishment concerned should sponsor and support the dispute. All that is necessary is that the dispute in order to become an industrial dispute should have the support of a substantial section of the workmen concerned in the establishment. What a substantial section of workmen may mean will depend upon the particular facts of each case. If such a collective dispute exists in relation to the matters specified by the definition of an industrial dispute, then the conditions required on the appropriate Government to make a reference of the dispute for adjudication are satisfied. (emphasis supplied) Whether such an industrial dispute exists is a matter left to the opinion of the appropriate Government making the reference. It is clear from Section 10 that the actual existence of an industrial dispute is not an essential condition to the making of a valid reference for adjudication but that the appropriate Government is competent to make such a reference, even if it apprehends an industrial dispute. But what falls to be particularly observed is the requisite that before a reference is made, there should be an industrial dispute either existing or apprehended. Once that requisite is satisfied, all the conditions of a valid reference Under Section 10 (i) are also satisfied. There is no indication in Section 10 of any further requisite or condition to be satisfied in order to sustain the continued validity of the reference until it ends in an award. When an industrial dispute has been referred to a labour court, Section 15 directs that it should hold its proceedings expeditiously and should on the conclusion thereof submit its award to the appropriate Government.....”

22. In the present reference it is not the case of the parties that the union and the workmen originally sponsored the cause have recoiled or withdrawn from the lis. Even if the union was unrecognized it would not mean that the workmen did not have the competence to raise the dispute. One of the principles well recognized in labour jurisprudence is that the parties to a reference being the employer and his employees, the test must necessarily be whether the dispute referred to adjudication is one in which the workmen or a substantial section of them have a direct and a substantial interest. The question of authorization is never of importance and so is the case in hand. It is so even in a dispute relating to a single workman and as such much more is the rigor of the said principle when the dispute relates to workmen jointly. In fact in the present lis also the dispute referred to this Court is one in which workmen not only have community of interest but all of them have a direct and a substantial interest. In fact so is the mandate of the judgments referred to by the Ld. counsel for the respondent. It thus cannot be said that the petitioner union is not competent to maintain the present reference. Both the issues thus are decided against the respondent and in favour of the petitioner union.

23. The argument raised by the respondent that this Court derives powers from the reference and as such relief can be awarded as per the demands alone, itself is by now more than well settled the said question shall be taken into consideration while answering in merits of the claim so raised by the petitioner union.

Issues No. 1, and 3:

24. All the three issues are being taken up together for discussion as they are correlated and intermingled. The Ld. counsel for the parties in all fairness have conceded that primarily the conspectus of the dispute has now narrowed down to a few demands one of them being the grant of difficulty allowance and the demand relating to pay allowances at par with the principal employer i.e. NTPC. The Ld. Authorized Representative for the petitioner has also tried to canvass that the workmen be granted bonus and overtime as per the statutory requirement of the labour laws. Admittedly the demands no.1, 2, 5, 6, 7 and 9 raised vide demand notice dated 12.5.2004 has been amicably settled inter se the parties during the course of conciliation. The said fact has even been pleaded by the petitioner union in its statement of claim. The said demands pertained to the overtime, engagement of cleaners in vehicles, regarding the liveries, canteen facility and residential colony for the workers working in Kol Dam and regarding education for children of workmen.

25. The other demands which were apparently left unaddressed pertain to medical allowance, regular pay scale in accordance with the notification issued by the Central/State Government, employment of locals and giving preference to the oustees, difficulty and danger allowance and payment of project allowances as was being paid to the BBMB Employees. The supplementary demands raised by the petitioner union vide Ex. PW2/M dated 31.5.2004 related to the payment of equal pay for equal work, the implementation of the labour laws in the Kol Dam. They are generalized and are supplementing the demands raised earlier vide Ex. PW2/N. The demand of minimum wages as per the notification of the State Government, the payment of bonus as per Payment of Bonus Act and the appropriate arrangements vis-à-vis security of the workmen are the other demands highlighted in the two charters.

26. Though the Ld. counsel for the respondent would contend that all demands raised by the union were addressed during the course of conciliation and the other issues being statutory in nature can hardly be termed as demands. The respondents are duty bound to abide by the various provisions of the labour laws and as such the said demands so raised cannot be addressed by this Court. On the other hand the Ld. authorized representative for the petitioner contends that apart from difficulty and danger allowance and the non payment of equal pay as per the employees of the NTPC and demand of bonus were the only demands left unaddressed by the respondents. No doubt the petitioner union has been claiming same wages and service conditions as are applicable to workmen directly employed by the NTPC but no evidence had been led by the union to prove on record as to what are and were the wages and prerequisites being granted by the NTPC to its daily wagers. Admittedly no parity can be claimed by adaily wager with the regular employees of the NTPC. In that situation the petitioner union should have proved and placed on record wages being paid to the daily wager by the NTPC. The PW2, General Secretary of the Union has appeared as a witness. Even he has not placed on record any evidence whereby parity could have been made along with similar workmen of the NTPC. He has merely deposed that the union was demanding equal pay for equal work on the basis of NTPC employees as like basic+DP+DA and other allowances and benefits as are applicable to the employees of the NTPC from time to time. It is by now well settled that the daily wagers cannot claim parity with the regular employees of the corporations/boards. No doubt the union could have claimed parity with the daily waged employees of the NTPC but no such evidence is forthcoming in this behalf.

27. Adverting to the other demands raised by the petitioner union regarding the payment of difficulty and danger allowance, it has come in the evidence on record after the year 2005 the respondents themselves were paying 21% as project allowance, Rs.250/- food allowance, Rs.46/- transport allowance and Rs.100/- as other allowance to the workmen engaged by them as is clear from the Ex. PW2/F, E. PW2/H and Ex. PW2/J. As per the testimony of PW2 prior to 2004 the respondent no.1 ITDP was paying the following packages to its employees 1.Basic pay 2. Project

allowance 60% of basic pay 3. Difficulty allowance 20% of basic pay 4. Food Allowance Nil, Medical Allowance Nil and Washing allowance nil. During the course of arguments the Ld. authorized representative for the petitioner had also tendered a memorandum of settlement arrived inter se the ITDP and Kol Bandh Workers Union INTUC un-registered whereby w.e.f. 28th July, 2004. Whereby some agreement had been entered into inter se the parties whereby project allowance @ 21% of the basic wages w.e.f. 28.7.2004 was to be paid to the workmen along with food allowance @ Rs.250/-, travelling allowance @ 46%, HRA Rs.175 etc. were agreed to be paid to the workmen. As per the evidence of PW2 even the sub contractor of the respondent ITDP i.e. MCM Services Private Ltd. was paying difficulty allowance @ 20% of the basic pay to its workmen but the same was not being paid to the workers of the ITDP. The respondent no.2 had led no evidence to show what were the wages being paid to the workmen either prior to the raising of dispute or after the same. The respondent no.2 has merely examined one witness Shri Surinder Pal, Dy. Manager, HR, NTPC who has merely deposed that some of the employees of the NTPC are covered under the Central Civil Services Rules and others are recruited as per the rules framed by the NTPC. One of the other witnesses examined by the respondent no.2 is an official of the Labour Commissioner's office who has placed on record list of representatives present during the course of conciliation vide Ex.RW3/A. No evidence had been led by the respondent to show as to what were the wages or the allowances being paid to the workmen. It is thus clear that the testimony of PW2 has gone un-rebutted. It thus comes to the fore that prior to 2004 the respondent was paying project allowance and difficulty allowance. By entering into a memorandum of settlement and that too with one of the unions the respondent no.2 had changed the service conditions by taking only one group of workmen into confidence. Not only the project allowance was reduced from 60%, even the difficulty allowance was not paid thereafter. No doubt as per evidence certain other allowances have been increased, but the respondent no.2 could not have done away so totally doing away with the difficulty allowance. To this extent the demand of the workmen is tenable. It is thus directed the respondent no.2 shall pay difficult allowance @ 20% of the basic pay as was being given prior to August, 2004 to the workmen, though other allowances shall remain the same. This shall be over and apart other allowances already been given to the workmen like project allowance, medical, HR, transport allowance etc.

28. The PW2 has further deposed that the workmen were entitled to bonus under the Payment of Bonus Act, 1965 as is being paid to the employees of the NTPC. It is by now fairly well settled that the contract labour is entitled to the same wages, even wage hours of workmen and other conditions of service as are applicable to the workmen directly employed by the principal employer. If the workmen of the NTPC are entitled to the benefits as per Bonus Act 1965 even employees of its contractors/sub contractors shall be entitled to the same. Even on this score there is no rebuttal evidence led by the respondent. If the employees of the NTPC are being paid bonus as per Payment of Bonus Act, 1965 the respondent No. 2 shall also be liable to pay the same, though obviously as per the mandate of the Payment of Bonus Act, 1965.

29. Other demands of the petitioner union having been already addressed by the respondent no.2. The demands of the union atleast vis-à-vis difficulty allowance and the payment of bonus is thus held to be tenable. Since no evidence has been led to even show the workmen had proceeded on strike w.e.f. 14.7.2004 it cannot be said that the strike resorted to by the petitioner union was illegal and bad in eyes of law. Consequently the issues in question are partly decided in favour of the petitioner and against the respondent. The issues re decided accordingly.

RELIEF

30. For all the aforesaid reasons discussed above the reference is partly allowed. The respondent no.2 is directed to pay 20% difficulty allowance as was being payable prior to August, 2004, which shall be over and above the allowances being paid as of now and that the respondent

No. 2 shall pay bonus as per requirement of the Payment of Bonus Act, 1965, if the employees of the NTPC are being paid bonus. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 31st day of December, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Dharamshala, H.P.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 542/08
Date of Institution : 14.7.2008
Date of decision : 30.12.2011

Sh. Gagan Singh s/o Sh. Amar Chand, R/o Vill. Larana, P.O. Marhi, Tehsil Sarkaghat,
District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District
Mandi, H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, A.R.
Sh. Vijay Kaundal, Adv.
For the Respondent. : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Gagan Singh s/o Shri Amar Chand by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 1-10-1999 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer ?”

2. It is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar by the respondent in July, 1998 and he worked continuously as such till 30-9-1999. The petitioner had completed more than 240 days in the preceding 12 months of his disengagement, still no notice or retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act) had been issued to the petitioner. His disengagement thus is void and illegal. 3. It is further the case of the petitioner that at the time of

retrenchment the respondent had retained persons junior to him namely Subhash Chand, Shashi Kant, Bidhi Chand, Balak Ram and Dalip Singh, who had been appointed in the month of November, 1998. One Shashi Kant was stated to have engaged in the year 2000. The respondents are stated to have not followed the principal of 'last come first go' as per section 25-G of the Act. Not only this, per the petitioner the respondent had even engaged fresh hands after his disengagement namely one Om Chand, Vidya Devi, Govind, Sher Singh, Jaiwanti etc. but no opportunity was afforded to the petitioner for reengagement. The action of the respondent is thus also stated to be in violation of Section 25-H of the Act.

4. The petitioner thus prays that his retrenchment w.e.f. 1-10-1999 be set aside and he be ordered to be reengagement with all consequential benefit.

5. While contesting the claim the respondents have raised preliminary objections vis-à-vis maintainability, suppression of material facts, estoppel and the claim being hit by the vice of delay and laches.

6. On merits it is not denied that the petitioner had not worked with the respondent, as alleged. However, per the respondent the petitioner had abandoned the job of his own sweet will in the year 1999. The retrenchment was effected by the department in the year 2005. The respondents thus pray for dismissal of the reference.

7. No rejoinder has been filed by the petitioner.

8. On 30-12-2009 the following issues had been framed by my Ld. predecessor :

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . . OPP.
2. Whether the claim petition is not maintainable, as alleged . . . OPR.
3. Whether the petition suffers from the vice of delay and laches . . . OPR.
4. Whether the petitioner is guilty of suppression veri ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct . . . OPR.
6. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

Relief. : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

10. Admittedly the petitioner had completed more than 240 days in the preceding 12 months of his disengagement as is clear from Mark-B and Ex.RW1/A, the mandays of the petitioner placed on record. It is however the case of the respondent is that the petitioner had himself abandoned job and as such there was no question of issuing any show cause notice to the petitioner nor he was entitled to any notice under Section 25-F or any retrenchment compensation thereof.

11. The petitioner while appearing as his own witness has categorically deposed that his service had been dispensed with verbally by the Assistant Engineer on 1-10-1999 and thereafter he had represented to the respondent time and again for his reengagement through UPC letter dated 4-12-1999, 19-7-2000, 14-8-2002, 7-3-2003 and 17-10-2005 which have also been placed on record vide Mark -A to Mark-E. It is further deposed by the petitioner that one Balak Ram figuring at Serial No.622 in the seniority list and one Shashi Lal reflected at serial No. 646 had been retained who were junior to the petitioner and as such the respondent had not followed the principle of 'last come first go' as envisaged under Section 25-G and had also engaged fresh hands after his disengagement namely Inder Singh (1-1-2000), Mamta Devi (6-4-2000) and Ajay Kumar (1-12-2003). Even at that time the petitioner had not been offered any opportunity for reengagement and as such the action of the respondent is also violative of Section 25-H of the Act.

12. On the other hands the respondent has examined the Executive Engineer Sh. N.K. Sharma as RW1. Apart from his bald deposition that the petitioner had himself abandoned the job there is no contemporaneous material that the petitioner had abandoned job or the respondent had issued show cause notice to the petitioner to explain his willful absence or ask him to report for duty. The respondent though have placed on record two muster-rolls Ex. RW1/B and Ex. RW1/C to show that the petitioner had failed to report for duty after 1-10-1999 but the same also does not show that despite his name being reflected in the muster-roll the petitioner had been marked absent after 1-10-1999.

13. By now it is fairly well settled that abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. It has thus to be inferred that the petitioner had not abandoned the job. It is thus apparent that the respondents have failed to prove the plea of abandonment so raised by them.

14. The respondents have failed to prove the plea of abandonment so raised by them. It has thus to be inferred that the petitioner had been disengaged. Admittedly he had completed 240 days in the preceding 12 months of his alleged disengagement. No notice had been issued to the petitioner and as such disengagement was indeed bad in the eyes of law. Not only this the seniority list of daily waged beldar of Dharampur Division Mark-A (inadvertently two documents have been marked as A) show that the persons engaged after the petitioner had since been retained and even fresh hands had been engaged after his disengagement. That being so disengagement of the petitioner is also violative of the provision of Section 25-G and 25-H of the Act. Consequently while allowing the reference the respondents are directed to reengage the petitioner. The petitioner shall be entitled to seniority and continuity from the date of his disengagement. However, keeping in view the laxity shown by the petitioner in raising the dispute he shall not be entitled any back wages. The issue is thus decided accordingly, partly in favour of the petitioner and against the respondent.

Issue No. 2:

15. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue in hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3:

16. The petitioner was disengaged on 1-10-1999. The failure report was submitted by the Labour Officer Mandi on 3-7-2007. In between the petitioner had raised an industrial dispute. The petitioner in fact raised the dispute after the respondent retrenched various workers in the year 2005. Some time could have been spent in conciliation. The delay in raising the dispute has been taken into consideration while granting the main relief. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as have been held by our own Hon'ble High Court in Naginder Kumar –vs- HPSEB (CWP No. 885/07 decided on 1-11-07) 2008(1) SLJ (HP) 425. In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“.....While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

Issue No. 4 & 5.

17. Nothing has been urged nor any thing has been brought to my notice as to how this Court has no jurisdiction to entertain and decide the present lis. The issue is accordingly decided against the respondent.

RELIEF

18. For all the aforesaid reasons discussed above the reference is partly decided in favour of the petitioner. Consequently, the respondents are directed to reengage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date other retrenched workers after 2005 have been engaged. However, the petitioner shall not be entitled to any back wages. The

reference is decided in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 30th day of Dec., 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 32/2010

Date of Institution : 23.4.2010

Date of decision : 6.12.2011

Sh. Gogi Alias Gagan Singh s/o Sh. Tilku, R/O Village Parah, P.O. Tikka Nagrota, Tehsil
Nurpur, Distt. Kangra, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Forest Division, Nurpur, District, Kangra, H.P.
. . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. M.S. Jamwal, Adv.
For the Respondent. : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Gogi Alias Gagan Singh s/o Sh. Tilku by the Divisional Forest Officer, Forest Division, Nurpur, District Kangra, H.P. w.e.f. 01-09-2007 without serving him charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, to what back wages, seniority, service benefits and relief the above named workman is entitled to?”

2. It is the pleaded case of the petitioner that he was engaged as a beldar on daily waged basis in the year 1993 by the respondent and such continued working as such till August, 2007. On 1st September, 2007 the service of the petitioner was dispensed with, without issuing any notice as required under the Industrial Disputes Act (hereinafter referred to as the Act). The petitioner had worked continuously for more than 240 days in all the calendar years and even in the preceding 12 months of his disengagement.

3. On 24-12-2007 the petitioner had raised the Industrial Disputes and hence the present reference.

4. It is further averred by the petitioner that his verbal disengagement is against the mandate of Section 25-F of the Act. The termination is also violative of Section 25-N of the Act. The respondent had also been resorting unfair labour practice by depriving the petition for completing 240 days in some of the years. The petitioner thus prays for his reengagement with all consequential benefit.

5. While contesting the claim the respondent has raised preliminary objections vis-à-vis maintainability, misrepresentation and the reference being hit by the vice of delay and laches.

6. On merits it is submitted by the respondent that in the Forest Department generally the work is not available for the whole of the year. Mostly the working is seasonal in nature. The work is carried on as per availability of budgetary provisions. The petitioner had also been engaged for seasonal forestry work in September, 1993. The petitioner was assigned plantation work and he has worked with the respondent as per the mandays placed on record vide annexure R-I

7. It is further the case of the respondent that the petitioner had willfully left job. In fact he was called by the respondent through one Kuldeep Singh, Rakha of Chhotidhar beat in June, 2008 at the start of next seasonal forestry work. As a matter of fact the petitioner had enrolled himself in MNREGA and was working in the said scheme after abandoning work with the respondent. It is denied that persons junior to the petitioner were retained or reengaged by the respondent. Further, per the respondent the petitioner is debarred from claiming parity with people who were continuously with the respondent. The respondent is stated to have completed more than 240 days only in the year 1999. The respondent thus prays for dismissal of the reference.

8. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

9. I notice that on 21-4-2011 the following issues have been framed by this court.

1. Whether the termination of the petitioner w.e.f. 1-9-2007 is violative of the provision of Section 25-F of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the reference is not maintainable, as alleged. If so, to what effect? . . . OPR.
3. Whether the petition is hit by the vice of delay and laches, as alleged. If so, to what effect? . . . OPR.
4. Relief.

10. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes.

Issue No. 2 : No

Issue No. 3 : No

Relief. : Allowed partly, as per the operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

11. Admittedly the petitioner had been working with the respondent since 1994. He worked continuously with the respondent, thereafter till the year 2007. Both the petitioner and the respondent have placed on record the mandays, which are identical. Even as per Ex.PW1/B the petitioner had put in appearance for more than 240 days only in the year 1999. However as per the mandays itself the petitioner has worked continuously with the respondent till the year 2007.

12. No doubt the petitioner has not completed 240 days in the preceding 12 months of his disengagement but the fact remains, as is also clear from the mandays of the petitioner that he worked in almost all the months of the year. The respondents plea of seasonal work, which has been though raised half heartedly, cannot be sustained.

13. The specific defense set up by the respondent is that since the petitioner had himself abandoned job, he was not entitled to any notice.

14. By now it is fairly well settled that abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. It has thus to be inferred that the petitioner had not abandoned the job. It is thus apparent that the respondents have failed to prove the plea of abandonment so raised by them.

15. Apart from the bald statement of the D.F.O. Sh. J.C. Katoch, who has appeared as RW1. there is nothing on record to prove the plea of abandonment, so raised by the respondent. Admittedly no show cause notice was issued to the petitioner for his willful absence or asking him to report for duty. Though one Kuldeep Singh, Rakha working in Chhotidhar beat has been examined as RW3 but, per his deposition he had asked the petitioner to rejoin work in June and July two years back on the instruction of one Lal Singh Guard. Even if his testimony is to be believed he had verbally asked the petitioner to rejoin somewhere in June, July 2008. The disengagement of the petitioner pertains notice to September, 2007. The information of RW3 directing the petitioner to report for duty after almost 9 or 10 months cannot be said to be sufficient for recalling the petitioner to job. A labourer cannot be expected to remain idle for 9/10 months and that too in the hope that he would be recalled someday. Moreover the trend of his working from the mandays shows that the petitioner had been working in almost all the months of the year with the respondent. Over and apart there is no documentary evidence co-terminus with the deposition of any of the respondents witness atleast vis-à-vis the plea of abandonment so raised by them. It has thus to be inferred that the petitioner had not abandoned job, rather his service has been disengaged. If that was so the petitioner was entitled to the statutory protection of 25-F. Admittedly no notice had been issued to the petitioner.

16. To this extent, the disengagement of the petitioner is illegal and against the statutory and mandatory provision of Section 25-F. Consequently, disengagement of the petitioner is set aside. As a sequel thereto the respondent is directed to reengagement of the petitioner. He shall be entitled to seniority and continuity from the date of his illegal disengagement. Seeing to the peculiar facts of the case discussed above, no back wages are awarded to the petitioner. The issue is thus decided accordingly, partly in favour of the petitioner and against the respondent.

Issue No. 2:

17. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue in hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3:

18. The service of the petitioner was disengaged in Sept., 2007. The Conciliation Officer-cum-Labour Inspector Kinnour had referred the dispute to the appropriate Government on 10-9-2009. Some time might have elapsed between the raising of the dispute and its reference to the appropriate government on 10-9-2009. By no stretch of imagination it can be said that the petitioner had raised a stale claim. It is thus held that the dispute was raised by the petitioner promptly. Even otherwise the rigors of the limitation Act are not applicable to the provisions of this Act. The issue in hands is thus decided against the respondent and in favour of the petitioner.

RELIEF

19. For all the aforesaid reasons discussed above the reference is partly decided in favour of the petitioner. Consequently, the respondents are directed to reengage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement though except back wages. The reference is decided in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 6th day of Dec., 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 48/2010
Date of Institution : 23.4.2010
Date of decision : 25.11.2011

Smt. Guddi Devi W/o Shri Gurdev, VPO Purthi, Tehsil Pangi, Distt. Chamba, H.P.
.. Petitioner.

Versus

The Executive Engineer, I&PH Division Pangi at Killar, District Chamba, H.P.
.. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Guddi Devi W/o Shri Gurdev daily wage beldar by The Executive Engineer, I&PH Division Pangi at Killar, Distt. Chamba, H.P., w.e.f. Year, 2004 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that she was appointed as a beldar by the respondent in the year 1998 in HPPWD Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. Thereafter she worked continuously and uninterruptedly till the year 2005, when her services were terminated without any reason, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas her services were disengaged.

4. The petitioner thus contends that her termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of her termination.

5. The petitioner thus seeks her re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections vis-à-vis maintainability, estoppel and the reference being hit by the vice of delay and laches.

7. On merits it is the case of the respondent that the petitioner had abandoned her job and thereby also lost her seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 18.3.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. year, 2004 is violative in the provisions of Section 25-F, & 25-G of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto. . . OPR.
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, its effect thereto. . . OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes
 Issue No.2 : No
 Issue No.3 : No
 Relief. : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating her services. Per contra it is the case of the respondent that the petitioner had herself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had herself abandoned job in September, 2004. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as her own witness has deposed that some of juniors to her were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, she was entitled to the protection of provisions of Section 25-G of the Act and the respondents was duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as State of H.P. vs. Prem Lal 2010 (3) Him. LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford herself for re-employment, which was also

not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. She is ordered to be re-engaged forthwith. She shall be entitled to seniority and continuity from the date of her illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

Issue No. 2:

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3:

15. No doubt the petitioner was terminated in the year 2004 and the failure report was submitted by the conciliation officer on 21.5.2009. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of her illegal

termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H. P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 132/2009
Instituted on : 27.2.2009
Decided on: 5.12.2011

Shri Hari Dass S/o Shri Basanta, R/o Village Dharnashi, P.O. Sadhote, Tehsil Sarkaghat,
Distt. Mandi, H.P. . . *Petitioner.*

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District
Mandi, H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Hari Dass S/o hri Basanta, by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H. P. w. e. f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on 19.4.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination. 6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect?

.. OPP.

2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect?

.. OPP.

3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect? . . OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect? . . OPR.
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of backwages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : Yes
- Issue 3 : No
- Issue 4 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

13. Both the issues are being taken up together for discussion as they are co-related and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);

- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an ‘industrial establishment’ within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus: “(m) “factory” means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

17. The parties’ pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
 - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it

thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter IV A of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

"25B. *Definition of continuous service.* For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case...."

23. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 19.4.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of "last come first go" as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

"25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

27. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The records show that the respondents have employed daily waged beldars even in the year 2006. One Jagdev S/o Shri Ranjeet Singh had been appointed on 1.2.2006.

28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

29. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

30. The infraction of the provisions of Section 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-H is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-H. In this

behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

31. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred *“that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....”* There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 3:

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 867/2007-10046, dated 4.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi, dated November 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4:

34. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

35. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of December, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 189/2010
Date of Institution : 31.5.2010
Date of decision : 25.11.2011

Shri Hari Singh S/o Shri Chatter Singh, R/o Village Chhow, P.O. Purthi, Tehsil Pangi,
District Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P.
. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Hari Singh S/o Shri Chatter Singh by The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P. w.e.f. September, 2004 and retaining the junior workmen, as alleged by worker, is proper and

justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?"

2. The petitioner has averred in the statement of claim that he was appointed as a beldar by the respondent in the year 1997 in I&PH Division Pangri at Killar. Thereafter he worked continuously and uninterruptedly till the year 2004, when his services were terminated orally, without any notice, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas his services were disengaged.

4. The petitioner thus contends that his termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of his termination.

5. The petitioner thus seeks his re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections that the petitioner was engaged in May, 1998 and worked as such till the year 2004. The petitioner had not completed the criteria of minimum 160 days in each calendar year.

7. On merits it is the case of the respondent that the petitioner had abandoned his job and thereby also lost his seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 27.8.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. September, 2004 is violative in the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto. . . OPR.
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, its effect thereto. . . OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Relief. : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in September, 2004. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled *State of H.P. vs. Bhatag Ram and Anr.* (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as his own witness has deposed that certain juniors to him were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, he was entitled to the protection of provisions of Section 25-G of the Act and the respondents were duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as *State of H.P. vs. Prem Lal* 2010 (3) Him. LR 1363 and *State of H.P. & Ors. vs. Chet Ram* (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

Issue No. 2:

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3:

15. No doubt the petitioner was terminated in the year, 2004 and the failure report was submitted by the conciliation officer on 17.9.2008. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 19/2008

Date of Institution : 17.1.2008

Date of decision : 9.11.2011

Shri Hem Raj S/o Shri Kashmir Singh, R/o Village Rampur, Tehsil & District Una, H.P.
. . . Petitioner.

Versus

Executive Engineer, Transmission Division, H.P.S.E.B. Rakker, District Una, H.P.
. . . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Shri R.K. Singh Parmar, AR
For the Respondents : Shri Pardeep Dogra, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Hem Raj S/o Shri Kashmir Singh workman by the Executive Engineer, Transmission Division, H.P.S.E.B. Rakker, Una, District Una, H.P. w.e.f. 26.2.1997 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. It is averred by the petitioner that he was engaged as a Conductor by the respondents in a Truck bearing No.6292 on 26.11.1991. The petitioner was engaged on muster roll basis on different slabs of daily wages, lastly being Rs.45.75 paise as on 30.4.1998. The petitioner continued working upto November, 1998 but no wages have been paid to him.

3. The respondents had disengaged the services of the petitioner w.e.f. 15.11.1998. The petitioner approached the respondents a number of times but to no avail. It is further averred by the petitioner that he has not been paid wages for about 7 months i.e. w.e.f. May, 1998 to November, 1998. The respondents are stated to have issued no notice to the petitioner before his disengagement. The petitioner had continuously worked with the respondents w.e.f. 26.11.1991 till his disengagement in November, 1998 and in the process had completed 240 days uninterrupted service. It is further averred by the petitioner that the respondents have not only retained persons junior to him but have also engaged fresh hands after his disengagement and as such the action of the respondents is violative of the provisions of Section 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The action of the respondent is also contrary to the Standing Orders adopted by the respondent Board.

4. The petitioner thus claims his re-engagement with all consequential benefits.

5. While contesting the claim the respondents Board have inter alia raised the preliminary objections vis-à-vis maintainability, limitation, suppression of material facts and the petitioner being estopped from filing the reference.

6. On merits it is not denied that the petitioner was not engaged w.e.f. 26.11.1991. It is however the case of the respondents that the petitioner was engaged intermittently. He was a casual worker. He worked upto 25.2.1997 and his services were disengaged due to non availability of work on 25.2.1997. It is further stated that the petitioner had left job of his own accord and that too without intimation to the respondents. The respondents thus pray for the dismissal of the reference.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. I notice that on 15.1.2009 the following issues had come to be framed by my Ld. Predecessor:

1. Whether the termination of service of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? . . . OPP.
2. Whether after the termination of services of the petitioner the respondent engaged fresh workman without observing the provision of Section 25-H of the Industrial Disputes Act, 1947 . . . OPP.
3. Whether the services of the petitioner were never terminated but he has abandoned the job on his own. . . OPR.
4. Whether the claim petition is not maintainable as alleged. . . OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . . OPR.
6. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Partly yes
 Issue No. 2 : Partly yes
 Issue No. 3 : No
 Issue No. 4 : No
 Issue No. 5 : No
 Relief. : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3:

10. All the three issues are being taken up together for discussion as they are correlated and intermingled.

11. In the reply the respondents have raised a specific plea that the petitioner was a casual worker he worked with the respondent Board intermittently w.e.f. 26.11.1991 till 25.2.1997 and thereupon he had himself abandoned job. The witness for the respondent namely Shri Ashwani Kumar, Executive Engineer, Transmission Division HPSEB, Una has however deposed that the

petitioner had not completed 240 days continuous service in any calendar year and he had been engaged against specific work and on completion of the same and non availability of work and funds the petitioner was discontinued. The same is explicitly clear from the affidavit filed by the witness as Ex.RW1/A. It is further the deposition of RW1 that the Board does not maintain seniority list of casual worker and he had been admittedly not issued any notice at the time of his disengagement. The respondent has also placed on record the mandays of the petitioner vide Ex RW1/B.

12. Though the respondents have raised the plea of abandonment but the RW1 has not deposed in the said terms. The plea of abandonment so raised by the Board has thus not been corroborated in any sense while leading evidence. It is thus to be presumed that the petitioner had not abandoned job. Otherwise too, it is by now fairly well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent.

13. Even qua specific work there is no evidence on record to remotely suggest that the petitioner had been engaged for such work apart from the bald statement of RW1 there is no contemporary record to remotely show so. On the contrary Ex. RW1/B the mandays of the petitioner clearly shows that in the preceding 12 months the petitioner had put in 242 days with the respondent Board. It was therefore incumbent upon the respondent Board to have issued a notice under Section 25-F while dispensing with the services of the petitioner, even assuming he had been engaged for specific work. Non issuance of notice under Section 25-F of the Act is thus fatal to the respondents.

14. The plea of abandonment and specific work so raised by the respondent is fallacious as while filing reply to the demand notice issued by the petitioner vide Ex. R1 the respondents had themselves taken a specific stand that the petitioner was discontinued due to non availability of work. There is no such evidence on record and as such even otherwise it can be inferred that the pleas so raised by the respondents are not worthy of any credence. No seniority list has been placed on record by the respondents to dispute the factum of juniors or fresh hands having not been engaged. The Executive Engineer while appearing as RW1 has gone to the extent of deposing that no seniority list of casual workmen is maintained by the Board, which is otherwise against mandate of the Industrial Disputes Act, for, even workmen who have not completed 240 days are entitled to the protection of the provisions of Section 25-G and as such maintenance of a seniority list of all workmen is necessary and vital to abide by the principle of 'last come first go'.

15. For the reasons discussed it is more apparent that the disengagement of the petitioner was indeed violative of the provisions of Section 25-F. The petitioner has neither been engaged for a specific work nor he had abandoned job. Even otherwise for 6 long years the respondent Board continued engaging the petitioner continuously. The disengagement of the petitioner is set aside. The petitioner is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal disengagement. Seeing to the peculiar circumstances on record no back wages are being ordered in favour of the petitioner. More particularly as he has not rendered service to the Board during the said interregnum. The issues are accordingly decided partly in favour of the petitioner and against the respondent.

Issue No. 4:

16. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even

otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 5:

17. The rule of estoppel is not attracted in this case. The Ld. counsel appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

18. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 9th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 417/2009
Date of Institution : 28.8.2009
Date of decision : 25.11.2011

Shri Hukkam Chand S/o Shri Devo, R/o Village & P.O. Kumar, Tehsil Pangi, District Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Hukkam Chand S/o Shri Devo by Executive Engineer, I&PH Division Killar, District Chamba, H.P. w.e.f. year, 2001 and retaining the

junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?"

2. The petitioner has averred in the statement of claim that he was appointed as a beldar by the respondent in the year 1994 in HPPWD Division Pangi at Killar. Thereafter he worked continuously and uninterruptedly till the year 2001, when his services were terminated orally, without any notice, despite availability of work and funds. 3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas his services were disengaged.

4. The petitioner thus contends that his termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of his termination.

5. The petitioner thus seeks his re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections vis-à-vis maintainability and the petitioner was engaged in June, 1994 and worked as such till the year 2004. The petitioner had not completed the criteria of minimum 160 days in each calendar year.

7. On merits it is the case of the respondent that the petitioner had abandoned his job and thereby also lost his seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 27.8.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. year 2001 is violative in the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto. . . OPR.
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, its effect thereto. . . OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Relief. : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in September, 2004. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled *State of H.P. vs. Bhatag Ram and Anr.* (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as his own witness has deposed that certain juniors to him were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, he was entitled to the protection of provisions of Section 25-G of the Act and the respondents was duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as *State of H.P. vs. Prem Lal* 2010 (3) Him. LR 1363 and *State of H.P. & Ors. vs. Chet Ram* (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

Issue No. 2:

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3:

15. No doubt the petitioner was terminated in the year, 2001 and the failure report was submitted by the conciliation officer on 20.6.2008. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 497/2009

Date of Institution : 20.11.2009

Date of decision : 25.11.2011

Shri Inder Singh S/o Shri Kesh Dass, R/o Village & P.O. Rein, Tehsil Pangi, District
Chamba, H.P. Petitioner.

Versus

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P.
. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Inder Singh S/o Shri Kesh Dass by Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P. w.e.f. October, 2005 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that he was appointed as a beldar by the respondent in the year 1995 in HPPWD Division Pangi at Killar. Thereafter he worked continuously and uninterruptedly till the year 2005, when his services were terminated orally, without any notice, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas his services were disengaged. 4. The petitioner thus contends that his termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of his termination.

5. The petitioner thus seeks his re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections that the petitioner was engaged in June, 1997 and worked as such till the year 2005. The petitioner had not completed the criteria of minimum 160 days in each calendar year.

7. On merits it is the case of the respondent that the petitioner had abandoned his job and thereby also lost his seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 27.8.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. year 2005 is violative in the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto. . . OPR.
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, its effect thereto. . . OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
 Issue No. 2 : No
 Issue No. 3 : No
 Relief. : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in October, 2005. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as his own witness has deposed that certain juniors to him were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, he was entitled to the protection of provisions of Section 25-G of the Act and the respondents was duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the

termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as State of H.P. vs. Prem Lal 2010 (3) Him. LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

Issue No. 2:

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3:

15. No doubt the petitioner was terminated in the year, 2005 and the failure report was submitted by the conciliation officer on 9.9.2008. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 479/2009

Date of Institution : 20.11.2009

Date of decision : 22.11.2011

Shri Jagdish Chand S/o Shri Jageshar Ram, R/o Village Jathanani, P.O. Bhalyani, Tehsil & Distt. Kullu, H.P. . . *Petitioner.*

Versus

1. The Divisional Forest Officer Kullu, Forest Division Kullu, H.P. 2. The Divisional Forest Officer (Joint Forest Management Kullu), Distt. Kullu, H.P. . . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Shri N.L. Kaundal, AR

Shri Vijay Kaundal, Adv.

For the Respondents : Shri Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Jagdish Chand S/o Shri Jageshar Ram by The Divisional Forest Officer Kullu, Forest Division Kullu, H.P. w.e.f. 8/2002 without following the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is proper and justified? If not, what relief of service benefits including seniority and compensation the above work is entitled to?”

2. The case set up by the petitioner in pursuance to the reference is that he was engaged on daily waged basis in the office of the Divisional Forest Officer (JFM) on 12.8.1999 and he worked continuously till 15.4.2001. Thereafter the services of the petitioner was disengaged vide an order dated 20.3.2001, w.e.f. 16.4.2001. The petitioner had completed more than 240 days in the 12 months preceding his disengagement no notice had been issued to the petitioner prior to his disengagement as envisaged under Section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act) nor retrenchment compensation was paid to him.

3. The petitioner made innumerable representations to the respondents for his re-engagement, but to no avail. Eventually he filed an original application vide O. A. No.2511/2003 and the same was dismissed on 5.6.2006 on the grounds of jurisdiction, with liberty to the petitioner to approach the competent forum and hence the present reference.

4. It is further averred by the petitioner that the persons junior to him have been retained by the respondent and even fresh hands had been engaged thereafter without affording any opportunity of reemployment to the petitioner. The action of the respondent is also thus stated to be violative of the provisions of Section 25-G and 25-H of the Act.

5. While contesting the claim the respondents have raised the preliminary objection that the petitioner has suppressed material facts. Per the respondents on retrenchment from External Aided Scheme i.e. department for International Development –UK (DIFD) Project (C&D Phase) which was wound off on 31.3.2001 the petitioner was re-engaged on daily waged basis at Shishamatti Check Post under the control of Bhuthi Range w.e.f. 4/2001 to 8/2002. Thereafter, efforts to provide alternate employment were continuously made. In this behalf Range Officer Manali was requested to deploy the petitioner, however, because of the already existing surplus staff the petitioner could not be re-engaged. The petitioner was further directed to report to Incharge Beat Guard Shallang/Mashna to work as a daily wager in the nursery vide letter dated 31.7.2003 but the petitioner did not report for duty. It is thus averred by the respondent that the question of retrenchment of the petitioner does not arise. He can be given further employment as per availability of seasonal work. It is further averred by the respondents that the petitioner has not completed 240 days in a calendar year in Bhuthi range.

6. On merits it is the contention of the respondents that the petitioner did work from 12/8/99 till 31.3.2001 in the project funded by an External Aided Scheme and thereupon his services were retrenched after issuing him one month's notice. The petitioner was also paid retrenchment compensation vide voucher No.188.

7. It is further the case of the respondents that after his retrenchment the petitioner was engaged as a daily wager at Shishamatti check post from 4/2001 to 8/2002. Thereupon he was directed to report to the Guard of Shallang?mashna on 31.7.2003 but the petitioner did not report for duty. The respondents thus prays for the dismissal of the claim. 8. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

9. On 11.5.2010 the following issues had been framed by this Court:

1. Whether the termination of the petitioner w.e.f. August, 2002 is in violation of the provisions of the Industrial Disputes Act, 1947 as alleged. OPP.
2. If the above issue is decided in affirmative to what relief the petitioner is entitled to? OPP.
3. Relief.

10. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No. 2 : As per operative part of the award.

Relief : Allowed partly, as per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 and 2

11. Both the issues are being taken up together for discussion as they are correlated and intermingled.

12. It is not in dispute that initially the petitioner was engaged in an External Aided Scheme (DIFD). He worked as such from 12/8/99 to 31/3/2001. It is however, the pleaded case of the respondents themselves that thereafter the petitioner was engaged as a daily wager at Shishamatti check post under Bhuthi range from April, 2001 to August, 2002.

13. Admittedly the petitioner has completed 296 days of continuous engagement in the preceding 12 months of his disengagement. The same is also clear from the reply filed by the respondents before the Labour-cum-Conciliation Officer, Mandi which has been placed on record as Ex. PW1/1. It is also admitted by the Divisional Forest Officer, while appearing as RW1. Though the plea of abandonment has not been raised in the reply filed by the respondents but the Divisional Forest Officer has stated so in his cross-examination.

14. The present lis primarily pertains to the disengagement of the petitioner in August, 2002. Since the petitioner had completed 240 days as a daily wager and that time he was admittedly not engaged in the External Aided Scheme (DIFD), the petitioner was indeed entitled to the protection of Section 25-F. Admittedly no notice had been issued to the petitioner. The disengagement of the petitioner thus is violative of the provisions of Section 25-F of the Act. The action of the respondents thus was illegal and unjust. Though it has been sought to be portrayed that the petitioner had abandoned job but no evidence is forthcoming in this behalf. No doubt the respondents have placed on record a communication dated 31.7.2003 Ex. RW1/F1 whereby the petitioner had been asked to report for duty somewhere in Shallang but it was incumbent upon the respondents to have offered reemployment to the petitioner as per the requirement of the provisions of Section 25-H. The fact however remains that while dispensing with his services the respondents had not followed the statutory mandate of the provisions of Section 25-F. His disengagement was illegal in the very inception. It is thus held that the termination of the petitioner was in violation of the provisions of Section of 25-F of the Act. Consequently the disengagement of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. He shall be entitled to seniority and continuity from the date of his illegal disengagement. Seeing to the peculiar circumstances of the fact and more particularly that the petitioner had been offered work by the respondents and he had failed to report for work the petitioner shall not be entitled to any back wages for the said interregnum. Both the issues accordingly decided partly in favour of the petitioner and against the respondent.

RELIEF

15. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement, though except back wages. The

reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today the 22nd day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 63/2010

Date of Institution : 23.4.2010

Date of decision : 3.12.2011

Smt. Jan Dai w/o Late Sh. Khem Raj, Village Kufa, P.O. Sach, Tehsil Pangi, Distt. Chamba, H.P. . . *Petitioner.*

Versus

1. State of H.P. Through Secretary, Rural Development and Panchayati Raj Department, H.P. Shimla-2.

2. The Director, Rural Development & Panchayati Raj Department, Shimla-9.

3. The Resident Commissioner, Pangi, District Chamba, H.P.

4. The Block Development Officer, Pangi, Distt. Chamba, H.P. . . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Vikramjeet Sharma, Adv.

For the Respondent. : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Smt. Jan Dai w/o Late Sh. Khem Raj by i) The Director, Rural Development & Panchayati Raj Department, Shimla-9, H.P. ii) The Block Development Officer, Pangi, Distt. Chamba, H.P. w.e.f. June, 2006 without serving her notice, charge-sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, to what back wages, seniority, service benefits and relief the above named workman is entitled to?”

2. In pursuance to the reference it is averred by the petitioner that she was engaged as a part time worker for four hours in the Government Sewing Centre run by the respondent No.1 on 18-7-1996. After the closure of the sewing centre she was engaged as a beldar in the Panchayat

Samiti, Pangi and she continued working as such continuously and uninterruptedly. Vide an order dated 1-7-2006, she had been ordered to work in the premises of Panchayat Samiti, Pangi. The respondent No.4 had also written for his regularization of the petitioner Director Rural Development (respondent No.2) as she had completed more than 10 years of service with the respondent.

3. However, the service of the petitioner was verbally disengaged and that too, without any notice. The petitioner had received salary uptill 6-6-2006. The petitioner had approached the higher authorities of the respondent department and even served a legal notice, but to no avail.

4. It is further averred by the petitioner that her verbal disengagement is illegal, unjust and arbitrary and the respondents have failed to abide by the provisions of the Industrial Disputes Act (hereinafter referred to as the Act). The petitioner thus prays for her reengagement with all consequential benefit.

5. While contesting the claim the respondents have inter alia raised preliminary objections vis-à-vis maintainability and the reference being hit by the vice of delay and laches.

6. On merits it is not denied that the petitioner had been working with the respondent since year 1996. However, per the respondent she had been engaged as a daily paid worker w.e.f. 1-9-1997 and deputed in the apple orchard of the Panchayat Samiti Pangi where she worked till 30-6-2006. The mandays of the petitioner have been annexed alongwith as annexure-I. It is further averred by the respondent that due to lack of work in the orchard the petitioner had been directed to report for duty in the office of the Panchayat Samiti Pangi vide annexure R-II. However the petitioner did not report for duty and as such abandoned the services of her own will. It is further not denied that the case of the petitioner along with one Sh. Kishan Chand had been sent to the competent authority for regularization but their case was rejected since both had abandoned service. The respondents thus pray for dismissal of the reference.

7. o rejoinder has been filed by the petitioner.

8. On 19-2-2011 the following issues had been framed by this court.

1. Whether the termination of the petitioner w.e.f. June, 2006 is violative of the provisions of under Section 25-F of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.

2. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Relief. : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

10. Admittedly the petitioner had been working with the respondents as a daily waged worker w.e.f. the year 1996. In the year 1996, the petitioner had been working as a part time worker in the sewing centre. The mandays of the petitioner placed on record by the respondent shows that

she has worked continuously from 1997 till the year 2006 and she has completed more than 160 days in all the years.

11. Per the respondent after 1-7-2006 the petitioner never reported for duty and had abandoned job of her own volition. It is the case of the respondents that the petitioner had been directed on 1-7-2006 to work in the Panchayat Samiti office from 9 A.M. to 5 P.M. and in this behalf a letter Ex. RW1/B had been sent to the petitioner. However she never reported thereafter.

12. The case of the respondents thus is that the petitioner had herself abandoned the job and her services were never disengaged by the respondents. Therefore no notice, as required under Section 25-F of the Act was to be issued to her.

13. By now it is fairly well settled that abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. It has thus to be inferred that the petitioner had not abandoned the job. It is thus apparent that the respondents have failed to prove the plea of abandonment so raised by them.

14. Nothing has been placed on record to prove fact of abandonment, so pleaded by the respondent. The B.D.O., Sh. Nishant Thakur while appearing as RW1 has deposed in the aforesaid terms but no contemporaneous document has been placed on record to show that any show cause notice was issued to the petitioner for willful absence or she was directed to report for duty. No doubt Ex. RW1/B has been placed on record, but it merely shows that after 1-7-2006 the petitioner had been detailed to work in the office of the Panchayat Samiti from 9 A.M to 5 P.M. It does not ipso-facto prove that the petitioner had herself abandoned the job. In case, the petitioner had not reported for duty after the issue of the said letter, the respondent should have issued some show cause notice to the petitioner to explain her willful absence or directed her to report for duty, failing which her service should have been disengaged/terminated. It thus has to be inferred that the petitioner had not abandoned job but her services were disengaged.

15. Admittedly no notice under Section 25-F had been issued to the petitioner. In fact, even if the petitioner had not reported for duty in pursuance to letter dated 1-7-2006 (Ex. RW1/B), it was sufficient reason for the respondents to have issued a notice under Section 25-F, as her absence could have been a reason in itself to retrench the petitioner. Admittedly no such action was taken by the respondent. As per mandays on record the petitioner had completed more than 240 days (160 days in the present case, being a tribal area) in the preceding 12 months of her disengagement. The disengagement of the petitioner thus was illegal and unlawful, being against the statutory mandate of Section 25-F of the Act. It is consequently set aside. The respondent is directed to reengage the petitioner forthwith. She shall be entitled to continuity and seniority from the date of her illegal disengagement. However, seeing to the peculiar circumstances of the case discussed above she shall not be entitled to any back wages. The issue is thus decided accordingly, partly in favour of the petitioner and against the respondent.

RELIEF

16. For all the aforesaid reasons discussed above the reference is partly decided in favour of the petitioner. Consequently, the respondents are directed to reengage the petitioner forthwith. Seeing to the peculiar circumstances of the case discussed above she shall not be entitled to any

backwages. The petitioner shall however be entitled to seniority and continuity from the date of her illegal disengagement. The reference is decided in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 3rd day of Dec., 2011.

KR. CHIRAG BHANU SINGH,

*Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.*

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 44/2010

Date of Institution : 23.4.2010

Date of decision : 25.11.2011

Smt. Karam Dei W/o Shri Mangal Dass, R/o Village Dhanala, P.O. Sahali, Tehsil Pangi, District Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, I&PH Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. . . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.R. Bhardwaj, AR

: Sh. Inder Singh Jaryal, AR

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Karam Dei W/o Shri Mangal Dass daily wages beldar by The by Executive Engineer, I&PH Division Pangi at Killar, District Chamba, (H.P.) w.e.f. Year 2003 without complying the provisions of the Industrial Disputes Act, 1947 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. In pursuance to the reference the petitioner has averred in her statement of claim that she was engaged on daily wages by the respondent in June, 1995 and worked as such till September, 2003 in I&PH Sub Division Killar. During the said periods she completed more than 160 days continuous service in each calendar year.

3. It is further averred by the petitioner that she had never been charge-sheeted for any conduct of indiscipline or misconduct and she worked with the respondent with devotion. It is

further averred by the petitioner that the action of the respondent is illegal and unjustified and also against the principle of natural justice. Per the petitioner the said action of the respondent is also violative of the article 14 and 16 of the Constitution of India.

4. It is further averred by the petitioner that the respondent did not follow the principle of 'last come first go', as enshrined in Section 25-G. The persons junior to the petitioner who were engaged have since been retained while the services of the petitioner was dispensed with. The petitioner has named certain juniors like Balak Chand, Hari Chand, Amar Nath, Prakash Chand, Trilok Nath, Sham Lal, Dev Raj, Gautam Singh, Shri Hari and Samal Dass etc.

5. It is further the case of the petitioner that even after the disengagement of the petitioner fresh hands have been engaged by the respondent and as such the action of the respondent is also violative of the provisions of Section 25-H of the Act.

6. The petitioner thus claims her re-engagement with all consequential benefits.

7. The respondents while contesting the claim have inter alia raised the preliminary objections vis-à-vis maintainability, suppression of material facts and the reference is hit by the vice of delay and laches. It is also averred that the petitioner had abandoned the job of her own. Since she had not completed the criteria of 160 days in a few calendar years the petitioner was not regularized. The mandays of the petitioner has been annexed along with by the respondent. She had however abandoned job in the year 2004.

8. On merits it is the case of the respondent that the petitioner had abandoned her job and thereby also lost her seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have since been regularized, as per their seniority.

9. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

10. On 25.8.2011 the following issues were framed:

1. Whether the disengagement of the petitioner w.e.f. year 2003 is violative of the provisions of Section 25-F, 25-G & 25-H of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto. . . OPR.
3. Whether the reference is hit by the vice of delay and laches, as alleged. If so, to what effect? . . . OPR.
5. Relief.

11. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
 Issue No. 2 : No
 Issue No. 3 : No
 Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

12. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating her services. Per contra it is the case of the respondent that the petitioner had herself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

13. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had herself abandoned job in September, 2003. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job.

14. The mandays of the petitioner Ex. RW1/A, placed on record by the respondents is though suggestive of the fact that the petitioner had not completed 160 days in the 12 calendar months preceding her termination but other documentary evidence on record shows that Balak Ram, Hari Ram and Amar Nath, were appointed in the years 1997, 1998 and 1999 respectively as is clear from their mandays Mark-D on record. The seniority list of daily waged workers in respect of Killar Sub Division which has also been placed on record by the petitioner as Mark-B also shows that one Prakash Chand S/o Har Dyal had been appointed in the year 2001, Sucheta Ram S/o Shri Mahesh Chand had been also appointed in the year 2001 and Trilok Chand S/o Prem Lal had been appointed in the year 2002 as beldars. Ex. RW-1/B also shows that certain workmen were even engaged in the year 2006 and 2007. If that was so the respondents have violated the provisions of Section 25-G as well as 25-H of the Act. These provisions are mandatory in nature. The non compliance of the two provisions is also fatal to the respondents. It can thus safely be said that the respondents while disengaging the petitioner has failed to abide by the mandatory provisions of Sections 25-G and 25-H of the Act.

15. It is by now well settled that for seeking the protection of Section 25-G the requirement of having completed 240 days (in this case 160 days) is not a condition precedent as has been laid down by the Hon'ble Supreme Court in Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 and our own Hon'ble High Court in State of H.P. vs. Prem Lal 2010 (3) Him LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No. 3887/2011 decided on 3.6.2011). So, even if the petitioner had not completed 160 days in the preceding 12 months of her termination the respondents were still duty bound to have followed the principle of 'last come first go', which has not been done in the present case. Even while engaging people in the year 2006 and 2007, as is clear from Ex. RW-1/B, the respondents should have offered 190 opportunity to the petitioner to offer herself for re-employment. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. She is ordered to be re-engaged forthwith.

16. No specific evidence has been led to show that fictional breaks were granted to the petitioner. Nonetheless, the petitioner shall be entitled to seniority and continuity from the date of her illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the said interregnum, no back wages are being ordered in her favour.

Issue No. 2:

17. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3:

18. No doubt the petitioner was terminated in the year 2003 and the failure report was submitted by the Conciliation Officer on 12.5.2009. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation proceedings. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

19. For the foregoing reasons discussed hereinabove, the reference is allowed. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner

forthwith. The petitioner shall be entitled to seniority and continuity from the date of her illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 183/2010
Date of Institution : 20.5.2010
Date of decision : 25.11.2011

Shri Karam Dev S/o Shri Lala Ram, R/o Village & P.O. Kumar, Tehsil Pangi, District
Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD Division Pangi at Killar, District Chamba, H.P.
. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Karam Dev S/o Shri Lala Ram, by The Executive Engineer, HPPWD Division Pangi at Killar, District Chamba, H.P. w.e.f. Year,2005 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that he was appointed as a beldar by the respondent in the year 1997 in I&PH Pangi at Killar. Thereafter he worked continuously and uninterruptedly till the year 2001, when his services were terminated orally, without any notice, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas his services were disengaged.

4. The petitioner thus contends that his termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of his termination.

5. The petitioner thus seeks his re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections vis-à-vis maintainability and the reference being hit by the vice of delay and laches.

7. On merits it is the case of the respondent that the petitioner had been continued till the year 2005 and thereafter the petitioner had abandoned his job and thereby also lost his seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 15.7.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. year, 2005 is violative in the provisions of Section 25-F and 25-G of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto. . . OPR.
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, its effect thereto. . . OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Relief. : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in October, 2005. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled *State of H.P. vs. Bhatag Ram and Anr.* (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as his own witness has deposed that certain juniors to him were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, he was entitled to the protection of provisions of Section 25-G of the Act and the respondents was duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as *State of H.P. vs. Prem Lal* 2010 (3) Him. LR 1363 and *State of H.P. & Ors. vs. Chet Ram* (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

Issue No. 2:

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3:

15. No doubt the petitioner was terminated in the year, 2005 and the failure report was submitted by the conciliation officer on 3.9.2009. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how

the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 341/2009

Date of Institution : 23.5.2009

Date of decision : 30.12.2011

Shri Khem Raj S/o Shri Mast Ram, R/o Village Slog, P.O. Balag, Tehsil Sunder Nagar,
Distt. Mandi, H.P. . . . *Petitioner.*

Versus

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Lokesh Kapoor, Adv.

: Sh. Deepak Azad, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Khem Raj S/o Shri Mast Ram, by the Executive Engineer, I&PH Division Karsog, Distt. Mandi, H.P. w.e.f. 1.11.2000 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified. If not, what amount of back wages, seniority, past service benefits and compensation the above workers is entitled to from above employer?”

2. The case set up by the petitioner is that he had come to be appointed as a daily waged Beldar by the respondent in I&PH Sub Division Nihri, District Mandi on September, 1998. He continued to work as such till 31.10.2000 and in between the respondent had given fictional breaks to the petitioner. His services came to be verbally dispensed with on 1.11.2000 and that too without any prior notice, charge sheet or compensation.

3. It is further the case of the petitioner that the respondents have retained persons junior to him like one Raj Kumar, Gopal Singh, Chaman Lal and Brij Lal and as such violated the principle of ‘last come first go’ as envisaged under section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The respondents have also resorted to fresh recruitment and as such even violated the provisions of Section 25-H of the Act.

4. The petitioner had initially approached the Hon’ble Administrative Tribunal in respect of his illegal termination vide O.A. No. 1079/2001 but the same was dismissed for want of jurisdiction, with liberty to the petitioner to approach the competent forum and thereupon he had raised the industrial dispute on 1.3.2006.

5. While contesting the claim the respondent inter alia raised the preliminary objections vis-à-vis maintainability, non-joinder of parties, limitation and the termination of the petitioner being not within the definition of “retrenchment”, as the petitioner had reportedly abandoned work of his own. The administrative control of G.P. Bandli and Balag along with scheme had been transferred to the I&PH Division Sunder Nagar and the petitioner did not join for work in the I&PH Division Sunder Nagar and thereupon abandoned job.

6. On merits it is the case of the respondents that the petitioner did work with them till 31.10.2000, but it was intermittent in nature. The respondents never gave any fictional breaks to the petitioner. His services were never terminated; rather he left the job of his own sweet will.

7. It is further the case of the respondent that the administrative control of G.P. Bandli and Balag was transferred from I&PH Division Karsog to I&PH Division Sunder Nagar. In the present case no transfer had been made, but the petitioner was also shifted to I&PH Sub Division, Sunder Nagar, because the scheme on which he was working had also been transferred to I&PH Division Sunder Nagar. Theoretically and practically the petitioner was to work on the same

scheme, but the petitioner had not reported for duty on the said scheme. It is thus prayed by the respondent that the petitioner is not entitled for any relief.

8. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

9. On 27.10.2010 the following issues came to be framed by this Court:

1. Whether the termination of the petitioner w.e.f. 1.11.2000 is violative of the provisions of Section 25-F and 25-H of the I.D. Act, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable, as alleged. If so, to what effect. . . OPR.
3. Whether the petition is suffer from the vice of delay and laches, as alleged. If so, to what effect? . . . OPR.
4. Relief.

10. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
 Issue No. 2 : No
 Issue No. 3 : No
 Relief. : Allowed as per operative part of the award

REASONS FOR FINDINGS

Issue No. 1:

11. The petitioner's claim simplicitor is that his services were terminated on 1.11.2000 verbally and without any notice. On the contrary it is the stand of the respondent that the administrative control of G.P. Bandli and Balag had been transferred to I&PH Division, Sunder Nagar and the petitioner had been directed to report for duty in I&PH Division Sunder Nagar along with the scheme. He failed to do so and as such abandoned job of his own.

12. The case of the respondent thus of abandonment while the petitioner claimed that his services were terminated illegally. The petitioner in furtherance of his case has appeared as his own witness. The respondents have further placed on record an office order dated 20.9.2000 whereby the administrative control of G.P. Bandli and Balag Division (Ex. RW1/B) has been transferred to I&PH Sub Division Sunder Nagar, his mandays Ex. RW1/E and the details of the workmen who were alleged to be transferred from I&PH Division Karsog to I&PH Division Sunder Nagar. The respondents on the other hand have examined the Executive Engineer Sh. P.K. Vaidya as RW1. He has reiterated the stand taken by the respondents that the administrative control of G.P. Bandli and Balag was transferred to I&PH Division Sunder Nagar on 20.9.2000 but the petitioner did not report for duty on the scheme. Chaman Lal and one Brij Lal are still working in I&PH Sub Division

Nihri whereas the petitioner left job at his own sweet will. Such abandonment would not fall within the definition of the “retrenchment”.

13. The respondents have not produced anything on record to show that the services of the petitioner had been transferred to I&PH Division Sunder Nagar along with some scheme. No documentary evidence has been placed on record in this behalf. There is no iota of evidence to remotely show that the petitioner had been informed of the change of his service conditions or that he was to report for duty at I&PH Division Sunder Nagar. The respondent has placed on record Ex. RW1/C, which is an office order showing that the administrative control of the work falling in G.P. Bandli and Balag was transferred to I&PH Sub Division Sunder Nagar. It also does not show that some scheme was transferred to I&PH Division Sunder Nagar. In fact some part of the area earlier following in I&PH Sub Division Nihri was transferred to I&PH Sub Division Sunder Nagar. It is not that a scheme had been transferred from one Sub Division to other. The plea of the respondents that the petitioner was engaged for a specific scheme, which itself was transferred to I&PH Sub Division Sunder Nagar is thus fallacious and not worthy of credence. Even for the sake of arguments if it is believed that the scheme was transferred as is the case of the respondent but there is no evidence on record remotely suggesting that the services of the petitioner were also transferred to the I&PH Sub Division Sunder Nagar or he was ever asked to report for duty in the new Sub Division. RW1 Shri P.K. Vaidya has also feigned ignorance whether a list of workmen was given to the I&PH Sub Division Sunder Nagar of the erstwhile workers working in Bandli and Balag. Admittedly no explanation was sought from the petitioner regarding his abandonment.

14. Even if it is to be assumed that the petitioner was to go with the scheme, apparently no notice of change as is contemplated under Section 9-A of the Industrial Disputes Act was ever given to the petitioner. The fact of non compliance of the provisions of Section 9-A of the Act would render the change in the condition of service void ab initio. As far as the question of abandonment is concerned, it is now well settled that the plea of abandonment has to be proved as a question of fact. There is no evidence on record to prove so. Moreover, since the said plea is itself contradicted by the respondents themselves that it was a transfer of the scheme to I&PH Sub Division, Sunder Nagar, it cannot be taken at its face value. I am afraid the plea of abandonment is also not sustainable in these circumstances.

15. It is thus to be held that the petitioner was neither engaged in a specific scheme nor any scheme had been transferred to I&PH Sub Division Sunder Nagar. The petitioner too was never shifted along with the scheme and thereupon had not even abandoned job. The services of the petitioner came to be terminated by the respondent in the most illegal manner, being in derogation to the mandatory provisions of the Industrial Disputes Act. His termination was not only in violation of the provisions of Section 25-F but also was a result of an unfair labour practice. It was also in violation of the provisions of Section 9-A of the Act. The termination of the petitioner was thus arbitrary and illegal.

16. Consequently for all the aforesaid reasons, the termination of the petitioner is set aside and quashed. He is ordered to be reinstated forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal termination. In the peculiar facts and circumstances of the case the petitioner is not held entitled to any back wages.

Issue No. 2:

17. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3:

18. The provisions of the limitation Act do not strictly apply to the dispute arising under the Act. Nonetheless the claim may be categorized to be a stale claim, if the right of workmen has become stale or died its own death. In the case in hand, immediately after his termination the petitioner had approached to the Hon'ble Administrative Tribunal vide O.A. No. 1079/2001 for the redressal of his grievances. The said original application came to be dismissed on the point of jurisdiction with liberty to approach the appropriate authority under the provisions of the Act. At the best it was a choice of the wrong forum. Thereafter the petitioner took recourse to the provisions of the Act. It cannot be said that the claim preferred by the petitioner was stale.

19. Even if the provision of the limitation Act had been applicable the petitioner would have got allowance for having approached a wrong forum. Thus it cannot be said that the petitioner would have lost the right and the remedy because of the wrong choice of forum. Issue is accordingly decided against the respondent.

RELIEF

20. For all the aforesaid reasons discussed above the termination of the petitioner is set aside and quashed. He is ordered to be reinstated forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of December, 2011.

KR. CHIRAG BHANU SINGH

Presiding Judge,

H.P. Industrial tribunal-Cum-Labour Court,

Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 416/2009

Date of Institution : 28.8.2009

Date of decision : 25.11.2011

Shri Kishan Chand S/o Shri Devi Sharan, R/o Village and P.O. Kumar, Tehsil Pangi,
District Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P.
. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Kishan Chand S/o Shri Devi Sharan by The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P. w.e.f. Year, 2005 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that he was appointed as a beldar by the respondent in the year 1994 in I&PH Pangi at Killar. Thereafter he worked continuously and uninterruptedly till the year 2005, when his services were terminated orally, without any notice, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas his services were disengaged.

4. The petitioner thus contends that his termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed 205 more than 160 days in all the calendar years and in the preceding 12 months of his termination.

5. The petitioner thus seeks his re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections vis-à-vis maintainability and the reference being hit by the vice of delay and laches.

7. On merits it is the case of the respondent that the petitioner had abandoned his job and thereby also lost his seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 27.8.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. 2005 is violative in the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto. . . OPR.
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, its effect thereto. . . OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No. 2 : No

Issue No. 3 : No

Relief. : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in October, 2005. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled *State of H.P. vs. Bhatag Ram and Anr.* (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as his own witness has deposed that certain juniors to him were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, he was entitled to the protection of provisions of Section 25-G of the Act and the respondents was duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as *State of H.P. vs. Prem Lal* 2010 (3) Him. LR 1363 and *State of H.P. & Ors. vs. Chet Ram* (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

Issue No. 2:

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3:

15. No doubt the petitioner was terminated in the year, 2005 and the failure report was submitted by the conciliation officer on 20.6.2008. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H. P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 534/2008

Instituted on : 14.7.2008

Decided on: : 5.12.2011

Shri Krishan Chand S/o Shri Bahadur Singh, R/o Village Kot, P.O. Tihra, Tehsil Sarkaghat,
Distt. Mandi, H.P. . . Petitioner.

Vs

The Executive Engineer, H.P.P.W.D. Division jDharampur, Tehsil Sarkaghat, District
Mandi, H.P. . . Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Krishan Chand S/o Shri Bahadur Singh by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on 1.6.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority-cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect?
.. OPP.
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect?
.. OPP.
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect?
.. OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect?
.. OPR.
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of backwages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : Yes
- Issue 3 : No
- Issue 4 : No
- Relief : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

13. Both the issues are being taken up together for discussion as they are co-related and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "*industrial establishment*" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment' within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

17. The parties’ pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a “factory” as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an “industrial establishment” within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner’s services were dispensed with, in its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.*—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months’ notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
 - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
 - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
 - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) he workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case....”

23. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent’s reply, deserves acceptance.

24. Not only this the perusal of the record shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 1.6.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent

is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

27. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The records show that the respondents have employed daily waged beldars even in the year 2006. One Jagdev S/o Shri Ranjeet Singh had been appointed on 1.2.2006.

28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

29. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

30. The infraction of the provisions of Section 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-H is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

31. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

Issue 3:

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was *inter alia* held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.2038, dated 16.4.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi, dated May 26, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

Issue 4:

34. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

35. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is

directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of December, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 210/2007
Date of Institution : 3.12.2007
Date of decision :30.11.2011

Shri Kuldeep Chand S/o Shri Kehar Singh, R/o Village & P.O. Dhalun, Tehsil and District Kangra, H.P. *...Petitioner.*

Versus

The Conservator of Forests, Working Plan & Settlement, Shimla-2, H.P. *.. Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :	Shri N.L. Kaundal, AR
	Shri Vijay Kaundal, Adv.
For the Respondents :	Shri Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Kuldeep Chand S/o Shri Kehar Singh workman by the Conservator of Forests, Forest Working Plan & Settlement, Shimla-171002 w.e.f. 22.12.2000, without complying with the provisions of the Industrial Disputes Act, 1947, is proper and justified? If not, what relief of service benefits and the amount of compensation the above aggrieved workman is entitled to?”

2. In pursuance to the reference it is averred by the petitioner that he was engaged by the respondent as a daily waged worker in January, 1997 and he worked under the control of DFO, Working Plan Division Dharamshala upto 15.11.1999. Thereupon his services were disengaged. The petitioner was constrained to file an O.A. No. (D) 325/99 before the Hon'ble Administrative Tribunal and on the basis an order dated 24.3.2000 the petitioner came to be re-engaged by the respondent. The petitioner was again disengaged by the respondents in the month of June/July, 2000. Again O.A. No. (D) 495/2000 came to be filed by the petitioner and by virtue of an order passed by the said Tribunal the petitioner was again re-engaged on 9.11.2000. He thereafter worked till 22.12.2000 when his services were again dispensed with. The petitioner again filed an original

application bearing O. A. No. (D) 554/2001. The disengagement of the petitioner (16.11.1999, June/July, 2000 and 22.12.2000) is stated to be illegal, unjust and arbitrary as no notice or charge-sheet had been served upon the petitioner and nor any retrenchment compensation had been paid to him as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. It is further stated by the petitioner that he had completed 240 days continuous service and as such the infraction of the provisions of Section 25-F renders his disengagement null and void.

4. It is further the case of the petitioner that one similar person Shri Kashmir Singh who had been working with the petitioner in the same Division at Dharamshala had also been terminated by the respondent. He too, had filed an O.A. No. (D) 106/2001 and had come to be reinstated by the respondent. He is still working with them. It is also averred by the petitioner that the respondents have retained persons junior to him in service and have also engaged fresh hands after his termination and as such the action of the respondent is also violative of the provisions of Section 25-G and 25-H of the Act.

5. Further, per the petitioner his original application No. 554/2001 had been dismissed on 13.10.2004 on the grounds of jurisdiction, with liberty to the petitioner to approach the competent forum and hence the present reference.

6. The petitioner thus prays for his re-engagement with all consequential benefits.

7. While contesting the claim the respondents have inter alia raised preliminary objections vis-à-vis maintainability and suppression of material facts.

8. On merits it is the case of the respondents that the services of the petitioner was disengaged on 22.12.2000 by giving one month's notice as contemplated under Section 25-F of the Act along with the retrenchment compensation, but the petitioner had refused to accept the same. The respondents have annexed along with copy of the notice and the refusal thereto. Further, per the respondents, the petitioner had not completed 240 days in the preceding 12 months of his disengagement.

9. In respect of Kashmir Singh it is averred by the respondent that he was engaged on 27.12.1996 and had completed 240 days continuously for 10 years starting from 1997 to 2006. He was regularized in the year 2006 subject to the policy of the State.

10. It is further averred by the respondents that the services of the petitioner was disengaged on 22.12.2000 when the working plan division was wound up, after following the proper procedure, as per the Act. It is further submitted by the respondent that the work pertaining to a Working Plan Division are temporary and are in progress only till the preparation of the working plan. The preparation of Dharamshala Working Plan was completed during May, 2001, which necessitated the disengagement of the petitioner.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I notice that on 3.6.2008 the following issues had been framed by my Ld. Predecessor:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation he is entitled to?

.. OPR.

2. Whether the claim petition is not maintainable. . . OPR.
3. Whether the petitioner is guilty of suppressio veri . . OPR.
4. Relief.

13. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Partly yes
 Issue No. 2 : No
 Issue No. 3 : No
 Relief : Allowed partly as per operative par of the award.

REASONS FOR FINDINGS

Issue No. 1:

14. The simple case set up by the petitioner is that his disengagement w.e.f. 22.12.2000 was illegal and unlawful as no notice had been served to the petitioner, as contemplated under Section 25-F of the Act and neither any charge sheet had been served on him and nor any inquiry conducted against him before disengaging him. It is also sought to be portrayed that persons junior to the petitioner had been retained and even fresh hands have been engaged after his disengagement and as such the action of the respondent is violative of the provisions of Section 25-G and 25-H of the Act.

15. Per contra, the respondents are stated to have issued retrenchment notice under Section 25-F of the Act on 18.11.2000 doing away with the services of the petitioner w.e.f. 19.12.2000. The retrenchment compensation amounting to Rs.2295/- was also stated to have been sent along with, by way of cheque, vide Ex.RW1/B. Over and apart it is the specific contention of the respondents that the services of the petitioner was terminated on 22.12.2000 when the working plan division had been wound up and proper procedure under the Act had been resorted to while disengaging the services of the petitioner. The respondents have further averred that though the petitioner had not completed 240 days in the preceding 12 months of his disengagement, yet a notice was issued to him. The work pertaining to the work plan divisions are stated to be temporary in nature and remained in existence only till the preparation of the working plans of the concerned division.

16. The retrenchment notice Ex. RW1/B also categorically corroborates the fact that since the working plan has been submitted the division was being closed and as such the services of the petitioner would no longer be required. The Chief Conservator of Forest Working Plan and Settlement, Mandi who has appeared as RW1 has also deposed on the same lines. As per Ex. RW1/C it is apparent that the petitioner had refused to receive the retrenchment compensation, so sent by the respondent.

17. The fact does emerges from the evidence on record is that the disengagement of the petitioner was necessitated because of the wounding up of the working plan division. More particularly, as the working plan had been submitted by the respondent. The respondent thus was very much within its right to have exercise the option contemplated by Section 25-F of the Act and the respondents had as per Ex. RW1/B issued retrenchment notice to the petitioner.

18. The Ld. Authorized Representative of the petitioner has further strenuously argued that the respondents had retained persons junior to him and also engaged fresh hands after the

disengagement of the petitioner and as such the action of the respondent is violative of the provisions of Section 25-G and 25-H of the Act. In this behalf much stress has been laid on Ex. D1 which is a seniority list of workmen prepared by the respondent. The Chief Conservator of Forest Shri Chandresh Sharma while appearing as RW1 has admitted that Ex. D1 has been prepared by the department. The witness has further admitted that Sunder Singh reflected at serial No.1 was working with the respondent on 22.12.2000 and even one Tek Singh reflected at serial no.3 was engaged on 18.11.2002 and the said workmen is still working with the respondent. He has also admitted that when Tek Singh was engaged no notice was issued to the petitioner for re-engagement. The witness has further tried to portray that the workmen reflected in Ex. D1 were posted in Kangra Division. However, the witness has deposed that Ex. D1 is a seniority list pertaining to the Dharamshala Working Plan Division. He has also admitted that Kashmir Singh was initially engaged at Dharamshala and is presently working at Shimla. The mandays of Kashmir Singh has also been placed on record vide Ex. RW1/F.

19. As per the evidence on record Kashmir Singh was engaged in 1996 and he has continuously worked (with 240 days in each calendar year till the year 2006).

20. No doubt, since the working plan had been submitted the respondents were within their right to have retrenched the services of the petitioner, but the same was liable to be done strictly on the principle of 'last come first go', as envisaged under Section 25-G of the Act. The Chief Conservator of Forest, while appearing as RW1 has admitted that Ex. D1 pertains to the entire Dharamshala working plan division. If that was so, it clearly emerges from the seniority list that Sunder Singh was junior to the petitioner as he was engaged for the first time on 18.11.1998 while one Tek Singh had been engaged for the first time on 18.11.2002. If that was so the action of the respondents in disengaging the services of the petitioner was not strictly in compliance with the principle of 'last come first go' and nor the provisions of Section 25-H had been followed while engaging fresh hands. Both the provisions are mandatory in nature. The non compliance of mandatory provisions of the Act is thus fatal to the respondent. Not only this by now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can ably be drawn by the judgments of the Hon'ble Supreme Court in *Central Bank of India vs. S. Satayam*, 1996 (5) SCC 419 and *Harjinder Singh vs. Punjab State Ware House Corporation*, 2010 (3) SCC 192 and our own Hon'ble High Court in *State of H.P. vs. Prem Lal* 2010 (3) Him LR 1363 and *State of H.P. & Ors. vs. Chet Ram* (CWP No. 3887/2011 decided on 3.6.2011). To this limited extent the disengagement of the petitioner is illegal.

21. The respondent while disengaging the petitioner has not followed the principle of 'last come first go'. Even if the working plan had been submitted the petitioner based on his seniority should have been offered employment in some other part of the working plan division. This gains significance because even as per RW1 the seniority list of workmen is maintained at divisional level. The respondents were duty bound to have maintained the divisional level seniority list and thereupon resorted to retrenchment strictly on the basis of the seniority. A bare glance at Ex. D1 shows that such procedure was not followed by the respondent. To this limited extent the disengagement of the petitioner is bad, being violative of the provisions of the Section 25-G and 25-H of the Act. Consequently the action of the respondents is set aside. The petitioner is directed to re-engage forthwith. Seeing to the peculiar circumstances of the fact discussed hereinabove the petitioner shall not be entitled to any back wages, more particularly since the working plan vis-à-vis Dharamshala had already been submitted and thereupon the petitioner otherwise had to be stationed at some other place in the division. The issue is accordingly decided partly in favour of the petitioner and against the respondent.

Issue No. 2:

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

Issue No. 3:

23. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

RELIEF

24. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall not be entitled to back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today the 30th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 55/2004

Date of Institution : 20.2.2004

Date of decision : 21.01.2012

Miss Kuldeep Kaur D/o Shri Balbir Singh, House No. 34, Diara Sector, Bilaspur, H.P.

. . Petitioner.

Versus

1. The Member Secretary, H.P. State Environment Protection and Pollution Control Board, Paryavaran Bhawan, Phase-III, New Shimla-171009.

2. The Assistant Environment Engineer, Regional Officer, H.P. State Pollution Control Board, Bilaspur, H.P.

. . Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondents : Sh. R.K. Raghu, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Miss Kuldeep Kaur D/o Sh. Balbir Singh, Part time Sweeper by the Secretary, H.P. State Environment Protection & Pollution Control Board, Paryavaran Bhawan, Phase-III, New Shimla-9. 2. The Assistant Engineer, Regional Officer, H.P. State Pollution Control Board, Bilaspur, H.P. w.e.f. 17.9.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief and service benefits Miss Kuldeep Kaur workman is entitled to?”

2. The short and simple case set up by the petitioner in her statement of claim is that she was engaged as a Part Time Sweeper w.e.f. 5.9.1995 and continuously worked thereafter till 17.9.2002. Due to her sudden ailment she could not attend duties after 17.9.2002. The petitioner had put in more than 240 days of continuous service prior to 17.9.2002. Thereupon the petitioner was never served any notice of termination nor any retrenchment compensation was paid to her. The petitioner thus contend that her disengagement is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The management was bent upon to terminate the services of the petitioner to adjust their near and dears, who was engaged immediately thereafter. The petitioner thus prays for her re-engagement with all consequential benefits.

3. While contesting the claim the respondents have raised the preliminary objections vis-à-vis maintainability and that the petitioner had herself abandoned job.

4. On merits it is averred by the respondents that the petitioner has not worked continuously from 5.9.1995 till 17.9.2002. The petitioner is stated to have worked as a Part Time Sweeper w.e.f. 5.9.1995 to April, 1997. She remained absent from work w.e.f. May, 1997 to February, 1998. She is stated to have been re-engaged in March, 1998 and thereafter she worked till 31.5.2002. After June, 2002 the petitioner is stated to have abandoned job without any intimation to the respondents. It is denied that the petitioner had completed 240 days in the preceding 12 months of her disengagement. Since the petitioner did not attend work after 1.6.2000 and as such she was not reengaged subsequently, more particularly keeping in view her erratic performance at work. hough notices for absence from work were issued to the petitioner on 3.6.2002 and 6.7.2002 affording her due opportunity to rejoin work. The petitioner is stated to have neither replied nor rejoined work. The petitioner is stated to have never informed the respondents about her illness. It is also averred by the respondents that since the petitioner was a Part Time Sweeper the provisions of the Industrial Disputes Act are not applicable. The respondents thus pray for the dismissal of the claim.

5. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

6. On 15.2.2011 the following issues had been framed by this Court:

1. Whether the termination of the petitioner w.e.f. 17.9.2002 is violative of the provisions of Section 25-F & 25-G of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? OPP

2. Whether the reference is not maintainable, as alleged. If so, to what effect? .,OPR.

3. Relief.

7. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : No

Issue No.2 : No

Relief. : Dismissed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

8. At the very outset it would be relevant to point out that the objections of the respondents that the petitioner being a Part Time worker was not entitled to the protection of the provisions of Section 25-F of the Act cannot be countenanced as by now it is fairly well settled that even if a workman is recruited for discharging temporary work, he/she can insist on compliance of the provisions of Section 25-F of the Act. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court rendered in *S. Nilajkar and others vs. Telecom District Manager, Karnataka*, (AIR 2003 SC 3553).

9. Nonetheless the respondents have a raised plea that the petitioner had herself abandoned job after 1.6.2002. Thereafter the petitioner had never reported for duty though the respondents had sent notices to the petitioner through UPC to report for duty immediately on 3.6.2002 and thereafter sent it by hand through Shri Sanjay Kumar on 6.7.2002, which the petitioner had refused to accept. On the other hand it is the contention of the petitioner that because of some ailment she could not report for duty and had even informed the respondent Board about her illness. The respondents had never issued any notice regarding her disengagement nor paid her any retrenchment compensation.

10. Though the petitioner claims that she could not assume job after 1.6.2002 because of her ailment but no evidence has been led by the petitioner to show that she was in fact ailing during the said period. From the evidence on record, apparently no medical leave had been sought by the petitioner nor she had reported her ailment to the respondents. Even before this Court nothing has been produced on record to show that the petitioner was ailing during the said interregnum. On the contrary the respondents have placed on record notice Ex. RW1/B dated 3.6.2002 whereby the petitioner had been directed to report for duty immediately. In continuation to the said notice the respondents had issued yet another notice on 6.7.2002 vide Ex. RW1/D which had been sent through the RW2, Sanjay Kumar. The said Sanjay Kumar had reported on 8.7.2002 to the respondent that the petitioner had refused to accept the notice and had informed him that she would report for duty within two three days. Apparently thereafter till September, 2002 the petitioner had not rejoined her post.

11. Since the petitioner has failed to produce any records showing that she was ailing between 1.6.2002 till 1.9.2002 and more so had also failed to report for duty during the said interregnum, even despite issuance of notices vide Ex. RW1/B and Ex. RW1/D, it has to be inferred that the petitioner had abandoned job.

12. Though the no formal order was issued by the respondents terminating the services of the petitioner but it is amply clear from evidence on record that despite notices being served on the petitioner to rejoin work immediately, the petitioner failed to report for duty. Seeing to the nature of job which entailed regular work and that too, everyday the respondents were well within right tongue a fresh hands. More so because the petitioner was a Part Time worker. The respondents waited till September, 2002. As the petitioner failed to report for duty after 1.6.2002 till 1.9.2002 it

is to be presumed and inferred that the petitioner had abandoned job. Despite notices the petitioner failed to report for duty and even before this Court has failed to produce any medical certificate regarding her ailment. It is thus held that the petitioner had abandoned job and as such the engagement of fresh hands after 1.9.2002 cannot be faulted on any ground. The respondents, however should have formally issued an orders regarding her disengagement and also offered retrenchment compensation thereof. Consequently the respondent is directed to grant one month's salary along with retrenchment compensation equivalent to fifteen days average pay for every completed year of continuation service from 1995 till 2002 along with one time compensation amounting to Rs.10,000/-.

13. For all the reasons discussed hereinabove it do not see any merit in the claim of the petitioner and the same is accordingly dismissed. There shall be no orders as to costs. The issue decided accordingly.

Issue No. 2:

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

15. For all the aforesaid reasons discussed above the reference is dismissed. However the respondent shall grant one month's salary along with retrenchment compensation equivalent to fifteen days average pay for every completed year of continuous service from 1995 till 2002 along with one time compensation amounting to Rs.10,000/-. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 21st day of January, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala (H.P.).

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 42/2010

Date of Institution : 23.4.2010

Date of decision : 7.12.2011

Sh. Madan Lal s/o Sh. Sarso Ram, Village Gonari, P.O. Kalehal, Tehsil Churah, Distt.
Chamba, H.P. *..Petitioner.*

Versus

1. The Divisional Manager, H.P. Forest Corporation Ltd. Chamba, District Chamba, H.P.
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, adv.

For the Respondent. : Sh. V.K. Vashisht, adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Madan Lal s/o Sh. Sarso Ram, vide letter dated 2-4-1994 by The Divisional Manager, H.P. Forest Corporation Ltd. Chamba, Distt. Chamba, H. P. without holding any enquiry is proper and justified? If not, to what back wages, seniority, service benefits and relief the above named workman is entitled to?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he was engaged as a Timber Watcher by the respondents in June, 1981 at Bhandal Unit and thereafter he worked continuously without any break in service till the year 1994. On 2-4-1994 the petitioner was served a notice purportedly under Section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act). The service of the petitioner was dispensed with. The petitioner immediately preferred a petition against the aforesaid notice before the Hon'ble Administrative Tribunal vide O.A. No(D) 210/1994. Pending the aforesaid petition the service of the petitioner was dispensed with vide order dated 27-4-1994 by the respondent but primarily on the grounds of irregularity in records. Though no inquiry was held against the petitioner. The aforesaid action of the respondent is also stated to be not only illegal but against the basic principles of natural justice.

3. The original application preferred by the petitioner was dismissed by the Hon'ble Tribunal on 31-7-2007 on the ground of jurisdiction, with liberty to the petitioner to approach the competent forum.

4. The action of the respondent is stated to be in violation of the provisions of Section 25-F and 25-G of the Act and that his services could not be terminated without proper inquiry or charge sheet if the same was on the ground of mis-conduct. The petitioner thus prays for his reengagement with all consequential benefit.

5. While contesting the claim the respondents have averred that the petitioner was engaged as a Timber Watcher on daily wages w.e.f. June, 1981 and thereafter appointed through the employment exchange w.e.f. 24-5-1983 as daily waged Timber Watcher. It is admitted that the petitioner was served with a notice under Section 25-F of the Industrial Disputes Act, on 2-4-1994 for negligence on the part of the petitioner for having caused a huge loss to the respondent corporation. It is further averred by the respondent that fire had broken out in Lot No. 11/93-94 Himgiri Churah and at that relevant time the petitioner was incharge of the said Lot. Consequently the petitioner was served a notice dated 2-4-1994 of terminated his service. There was no necessity to enquire into the matter of daily waged employees because action had already been taken under the rule. Retrenchment compensation amounting to Rs. 4,124/- had been paid to the petitioner vide a letter dated 21-4-1994 and the same was again sent to the petitioner vide registered letter dated 27-4-1994. Since the respondent corporation had suffered a huge loss due to the negligence of the petitioner and he was found guilty of not maintaining the record properly and that too with a malafide intention of giving undue benefit to the contractor, the services of the petitioner was terminated. The proper procedure for terminating the petitioner had been followed. The respondent thus prays for dismissal of the claim.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. On 24-2-2011 the following issues had been framed by this court.

1. Whether the termination of the petitioner w.e.f. 2-4-1994 without holding any enquiry is illegal and unjustified, as alleged. If so, to what relief the petitioner is entitled to? ..OPP.

2. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Relief. : Allowed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

10. The text and tenor of the pleaded case of the respondent is that the services of the petitioner had been terminated because of the huge loss-- suffered by the respondent corporation due to the negligence of the-- petitioner, who was also found guilty of not maintaining proper records during the course of his employment. The respondent had thus resorted to invoking the provisions of Section 25-F of the Act.

11. Though, per the respondent a notice under Section 25-F had been issued to the petitioner on 2-4-1994, which has been placed on record by the respondent vide Ex. PW1/B. But the perusal of the same shows that the said notice was not simplicitor a notice under Section 25-F but was a notice reporting the negligence of the petitioner whereby huge loss had been caused to the corporation. Apparently the same notice was again issued to the petitioner on 27-4-1994.

12. It is also the pleaded case of the respondent themselves that the termination of the petitioner was primarily for the negligence attributed to the petitioner which has caused a substantial loss of the corporation. No doubt the respondent corporation could have dispensed with the service of the petitioner merely by issuing a notice under Section 25-F, but in that eventuality the disengagement was not to be based on the punitive action so contemplated against the petitioner. Either the respondent could have simply dispensed with the service of the petitioner after issuing a simple notice under Section 25-F, but if punitive action was required to be taken, even if the petitioner was not liable to be proceeded against, under the CCS (CCA) Rules, atleast a reasonable opportunity of hearing had to be afforded to the petitioner. Punitive action could not have been initiated against the petitioner under the guise of a notice under Section 25-F. Though the respondent have pleaded that there was no necessity to enquire into the matter, I am afraid once action had to be taken for negligence and misconduct some opportunity of hearing had to be afforded to the petitioner to explain the misconduct. In fact the perusal of the notice dated 2-4-1994 also shows that no opportunity had been granted to the petitioner to explain his misconduct. The petitioner was sought to be condemned unheard. It is against the cardinal principle of law and natural justice. Even if no inquiry was initiated atleast the petitioner had to be heard before any punitive action was taken against the petitioner. No such steps were taken by the respondent corporation. In fact per them there was no necessity at all to enquire into the matter and such his service was dispensed with. There is nothing on record to show that even some sort of a fact

finding inquiry was conduct by the respondent to come to a conclusion that the petitioner was guilty of having been negligent or had with a malafide intention failed to maintain records properly. Over and part no opportunity was afforded to the petitioner to explain his misconduct. In these circumstance the respondent could not have used the provision of Section 25-F for dispensing with the services of the petitioner in an arbitrary manner. The question of misconduct had to be proved and reasonable opportunity had to be afforded to the petitioner to explain his misconduct. The disengagement of the petitioner thus cannot be said to be proper and justified. Consequently the same is set-aside. The respondents are directed to reengage the petitioner. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement. However, seeing to the peculiar factual narration discussed herein above he shall not be entitled any backwages for the said interregnum. The issue is thus decided accordingly, partly in favour of the petitioner and against the respondent.

RELIEF

13. For all the aforesaid reasons discussed above the reference is partly decided in favour of the petitioner. Consequently, the respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement though except back wages. The reference is decided in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 7th day of Dec., 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref. No. : 55/2006

Date of Institution : 20-3-2006

Date of decision : 7.1.2012

Sh. Man Singh son of Sh. Sant Ram, V.P.O. Slapper, Tehsil Sunder Nagar, District Mandi,
H.P. *. .Petitioner.*

Versus

The General Manager, Rosin & Turpentine Factory, Bilaspur, Distt. Bilaspur, H.P.
. .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Raj Kumar, adv.

For the Respondent. : Sh. R.S. Thakur, adv.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Man Singh s/o Sh. Sant Ram, Ex. Daily wages driver by the General Manager, Rosin and Turpentine Factory, Bilaspur, H.P. w.e.f. 11-5-2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to?”

2. The petitioner has averred in his statement of claim that he was engaged as a daily waged driver by the respondent management in the R & T Factory, Bilaspur on 1-9-1999. He continued working as such till the year 2003. He had completed more than 240 days in the preceding 12 months of his disengagement. But his services had been disengaged without any notice as contemplated under Section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act)

3. The respondents are also stated to have violated the provision of Section 25-G and 25-H of the Act and not following the principle of “First Come Last Go”.

4. The respondents while contesting the claim have raised preliminary objections vis-à-vis limitation, and that this Tribunal has no jurisdiction to entertain the claim.

5. On merits it is admitted that the petitioner was engaged as daily waged driver on 1-9-1999 initially for 3 months subject to further approval of the management. Subsequently the services of the petitioner were extended and his services were eventually retrenched due to non availability of work as per the provisions of Section 25-F of the Act. The petitioner had been served a notice dated 16-6-2003 along with a cheque of Rs. 5,625.00 as retrenchment compensation through registered post. However, the petitioner had refused to accept the same. Per the respondent, the services of the petitioner was retrenched after adopting the proper procedure laid down under Section 25-F of the Act.

6. It is denied that the principle of “Last Come First Go” was not adhered to by the respondent. Per the respondent, the petitioner was the only driver working on daily wages and as such the aforesaid principle had no application in the present case. The respondents thus pray for the dismissal of the reference.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. I notice that on 4-1-2008 the following issues came to be framed by my Ld. Predecessor.

1. Whether the termination from the service of the claimant is proper and justified? ..OPP.
2. If the above issue is proved in affirmative to what relief of service benefit the petitioner is entitled to? ..OPP.
3. Whether the claim petition is maintainable before this Court? . OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 :	No
Issue No. 2 :	As per operative part of the award.
Issue No. 3 :	No
Relief. :	Allowed partly, as per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 & 2.

10. Both the issues are being discussed together as they are corelated and intermingled.

11. Admittedly the petitioner was engaged on 1-9-1999 and he even continued working with the respondent till 10th of May, 2003. No doubt as per the respondent the petitioner had been retrenched due to non availability of work and all codal formalities had been followed valid while retrenching the petitioner. A bare glance at the retrenchment orders Ex. RW1/C shows that the said order was issued on 16-6-2003.

12. The services of the petitioner were ordered to be retrenched retrospectively that is w.e.f. 11-5-2003. The import of the order thus was that though the petitioner was retrenched on 16-6-2003 but his services were dispensed w.e.f. 11-5-2003.

13. The provisions of 25-F reads thus:

“ 25-F Conditions precedent to retrenchment of workmen—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employers until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

14. The reading of the aforesaid section 25-F clearly shows that the requirement prescribed in Section 25-F (a) and (b) is a condition precedent to retrench and failure to comply the same render the impugned retrenchment invalid and inoperative. The section manifestly shows that it is incumbent upon the employer to pay the workman the wages from the period of the notice. If the workman was being asked to leave forthwith, he could not be asked to collect his dues afterwards. One month notice is required to be issued when any employer does not wish to serve the advance notice as required, but in lieu thereof he choose to pay one month's wages. No doubt it may be upon the employer not to give a notice, but in that event it will be incumbent on him to pay one month's wages in lieu of notice, that is for the period of the notice. This is to be done before actual retrenchment. It is to precede the retrenchment and not to follow it (emphasis supplied). Likewise the retrenchment compensation has to be paid at the time of the retrenchment orders itself. The tender of compensation in order to be following under Section 25-F should be of the precise amount and should be made simultaneously with the termination of the services. The aforesaid principle of law as discussed herein supra is more than well settled. It was laid down as far back as 1960 by the Hon'ble Supreme Court in the case State of Bombay –vs- Hospital Mazdoor Sabha (1960 (1) LLJ 251) and National Iron Steel Company Limited –vs- State of West Bengal (1967 (II) LLJ 23) and has been reiterated innumerable times thereof.

15. In the present case too services of the petitioner were dispensed on 11-5-2003 whereas the purported notice under Section 25-F was issued to the petitioner on 16-6-2003. The notice was issued after about 1 month of the alleged retrenchment. The notice was to precede the retrenchment and not the other way around. Even the retrenchment compensation was not paid simultaneously long with the retrenchment. Apparently the requirement prescribed under Section 25-F (a) and (b) were not and could not have been complied. It is thus clear that the order of retrenchment passed by the respondent was avoid and ineffective. It is invalid in the eyes of law. It is thus held that the termination of the petitioner were improper and unjustified. Consequently the disengagement of the petitioner is set aside. He is directed to reengage the petitioner forthwith at the same place and post. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement. Seeing to the peculiar circumstances discussed above and more so since an endeavor was made to retrench the petitioner, though the retrenchment notice has been held to be invalid the petitioner shall not be entitled to any back wages. Not only this the petitioner has not worked during the said interregnum with the respondent. The issues are decided accordingly in favour of the petitioner and against the respondent.

Issue No. 3:

16. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue in hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

17. For all the aforesaid reasons discussed above the reference is partly decided in favour of the petitioner. Consequently, the respondents are directed to reengage the petitioner forthwith at the same place and post. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement, though except any back wages. The reference is decided in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 7th day of Jan., 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-Labour Court,
Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 488/2009

Date of Institution : 20.11.2009

Date of decision : 25.11.2011

Shri Man Singh S/o Shri Kanshi Ram, R/o Village Ghisal, P.O. Sach, Tehsil Pangi, District Chamba, H.P.

...Petitioner

Versus

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. T.R. Bhardwaj, AR

Sh. Inder Singh Jaryal, AR

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Man Singh S/o Shri Kanshi Ram by Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P. w.e.f. Year, 2002 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. In pursuance to the reference the petitioner has averred in his statement of claim that he was engaged on daily wages by the respondent in the year 1986 and worked as such till 30.9.1999 in Pangi Division at Killar. During the said period he completed more than 160 days continuous service in each calendar year. After his disengagement he had approached the Hon'ble Administrative Tribunal vide O.A. No.3099/99. Vide an order dated 19.4.2000 the petitioner was directed to be re-engaged and the period of his absence was directed to be counted towards his seniority. The petitioner was re-engaged, thereupon he worked continuously thereafter till September, 2002. Thereafter the respondent again disengaged his services in October, 2002.

3. No notices whatsoever have been issued to the petitioner at the time of his disengagement. He was again re-engaged for short spells from June to October in the year 2004 and 2005. The petitioner never absented from work voluntarily. However the respondent had been issuing muster roll to him at their own whims and fancies.

4. It is further averred by the petitioner that the respondent did not follow the principle of 'last come first go', as enshrined in Section 25-G. The persons junior to the petitioner who were engaged by the respondent have since been retained while the services of the petitioner was dispensed with. The petitioner has named certain juniors like Shiv Kumar, Surinder Kumar, Smt. Shiyam Dei, Smt. Bhag Dei, Smt. Shim Dei and Smt. Surti.

5. It is further the case of the petitioner that even after the disengagement of the petitioner fresh hands have been engaged by the respondent and as such the action of the respondent is also violative of the provisions of Section 25-H of the Act.

6. The petitioner thus claims his re-engagement with all consequential benefits.

7. The respondents while contesting the claim have inter alia raised the preliminary objections vis-à-vis suppression of material facts, maintainability, non-joinder and mis-joinder of necessary parties and delay and laches. It is also averred that the petitioner had abandoned the job of his own. Since he had not completed the criteria of 160 days in a few calendar years the petitioner was not regularized. The mandays of the petitioner has been annexed along with by the respondent. He had however abandoned job in the year 2006.

8. On merits it is the case of the respondent that the petitioner had abandoned his job and thereby also lost his seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have since been regularized, as per their seniority.

9. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

10. On 15.7.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. year, 2002 is violative in the provisions of Section 25-F, 25-G & 25-H of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to?
..OPP.
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto.
..OPR.
3. Whether the reference is hit by the vice of delay and laches, as alleged. If so, to what effect?
..OPR.
4. Relief.

11. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes
 Issue No. 2 : No
 Issue No. 3 : No
 Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1

12. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

13. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in October, 2005. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job.

14. The mandays of the petitioner Ex. RW1/A, placed on record by the respondents is though suggestive of the fact that the petitioner had not completed 160 days in the 12 calendar months preceding his termination but other documentary evidence on record shows that Balak Chand, Hari Ram, Amar Nath, Parkash Chand and Trilok Chand were appointed in the years 1997, 1998 and 2001 respectively as is clear from their Mark-C on record. The seniority list of daily

waged workers in respect of Killar Sub Division which has also been placed on record by the petitioner as Mark-B also shows that one Prakash Chand S/o Har Dyal had been appointed in the year 2001, Sucheta Ram S/o Shri Mahesh Chand had been also appointed in the year 2001 and Trilok Chand S/o Prem Lal had been appointed in the year 2002 as beldars. If that was so the respondents have violated the provisions of Section 25-G as well as 25-H of the Act. These provisions are mandatory in nature. The non compliance of the two provisions is also fatal to the respondents. It can thus safely be said that the respondents while disengaging the petitioner has failed to abide by the mandatory provisions of Sections 25-G and 25-H of the Act.

15. It by now well settled that for seeking the protection of Section 25-G the requirement of having completed 240 days (in this case 160 days) is not a condition precedent as has been laid down by the Hon'ble Supreme Court in Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 and our own Hon'ble High Court in State of H.P. vs. Prem Lal 2010 (3) Him LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No. 3887/2011 decided on 3.6.2011). So, even if the petitioner had not completed 160 days in the preceding 12 months of his termination the respondents were still duty bound to have followed the principle of 'last come first go', which has not been done in the present case. Even while engaging people in the year 2006 and 2007 the respondents should have failed to offer opportunity to the petitioner to offer himself for re-employment. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith.

16. No specific evidence has been led to show that fictional breaks were granted to the petitioner. Nonetheless the petitioner shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the said interregnum, no back wages are being ordered in his favour.

ISSUE NO. 2

17. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE NO. 3

18. No doubt the petitioner was terminated in the year 2002 and the failure report was submitted by the Conciliation Officer on 4.9.2008. Admittedly the petitioner continued working with the respondents till October, 2005 and he is stated to have abandoned job in 2006. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation proceedings. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

19. For the foregoing reasons discussed hereinabove, the reference is allowed. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 160/2009

Date of Institution : 27.2.2009

Date of decision : 7.01.2012

Shri Manohar Lal S/o Shri Anoop Singh, R/o Village Barnod, P.O. Golwan, Tehsil Ladbhrol, Distt. Mandi, (H.P.)

...Petitioner

Versus

The Sr. Executive Engineer, HPSEB Division Joginder Nagar, Distt. Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent :

Sh. Abhisekh Lakhanpal, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Sh. Manohar Lal S/o Shri Anoop Singh by the Sr. Executive Engineer, HPSEB Division Joginder Nagar, Distt. Mandi, H.P. w.e.f. 21.10.2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled from the above employer?”

2. The short and simple case set up by the petitioner in the statement of claim is that he was engaged as a beldar on daily wages by the respondent w.e.f. 25.11.1984. He thereafter worked as such uninterruptedly till 20.10.2004. Thereafter the services of the petitioner was disengaged without any notice, charge sheet or inquiry nor he was paid one month's salary in lieu of the notice. The petitioner was not granted any retrenchment compensation.

3. It is further averred by the petitioner that while disengaging his services the principle of 'last come first go' was not followed by the respondent and persons junior to him were retained namely Om Parkash, Birbal, Subhash Chand, Sanjay Kumar, Man Singh, Gian Singh and Shri Chatter Singh etc.

4. It is further the case of the petitioner that after his disengagement the respondent had engaged fresh hands too.

5. The petitioner thus contends that the action of the respondent is violative of the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and as such his disengagement is void and illegal.

6. The petitioner thus prays that he be ordered to be re-engaged with all consequential benefits.

7. The respondents while contesting the claim have raised preliminary objections that the reference is misconceived, the petitioner has no locus standi and that the reference was not maintainable.

8. On merits it is the contention of the respondent that the petitioner was engaged in the year 1984 and he served upto 24.7.1985 with certain interruptions and breaks. Thereafter the petitioner joined in the year 2003 and worked till 2004 though intermittently. The mandays of the petitioner have been placed on record. After 20.10.2004 the petitioner is stated to have never turned up for work. Even otherwise he is stated to be irregular in work and appointed for specific purpose and work only. The rest of the contents of the statement of claim were denied by the respondent. The respondent thus prays for the dismissal of the claim.

9. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

10. On 8.7.2010 the following issues had come to be framed by this Court:

1. Whether the termination of the petitioner w.e.f. 21.10.2004 is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to?

..OPP

2. Whether the petitioner has no locus standi to prefer the instant reference, as alleged. If so, its effect thereto.

..OPR

3. Relief.

11. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 :	Yes
Issue No.2 :	No
Relief. :	Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO. 1

12. Now advertent to the factual matrix of the case, it is more than clear from the mandays of the petitioner Ex. RW1/B that the petitioner had put in 283 days in the preceding 12 months of his disengagement. Though the respondents have pleaded that the petitioner was engaged for specific work but the mandays of the petitioner placed on record belie the case set up by the respondent. Even otherwise no evidence has been led to show that the petitioner was engaged against specific work. The respondents have also placed on record a purported notice of retrenchment issued to the petitioner and 9 other workmen vide Mark-A. The said notice was issued under Rule 14(2) of the Certified Standing Orders giving 10 days notice to the petitioner on the premises that the work against which the petitioner was engaged has come to an end. The said retrenchment notice under Rule 14(2) of the Certified Standing Orders was issued on 15.10.2004 (Mark-A). The said notice cannot be countenanced in any manner more particularly because the Respondent Board itself has specifically pleaded in umpteen number of cases that the Board has been exempted from the operation of the Standing Orders w.e.f. 11.9.1985. Though this has not been pleaded in the present case but judicial notice can be taken of the fact, as this defence is propounded by the Board in almost all cases coming up before this Court. Even otherwise the said notice cannot be taken into consideration as the petitioner had admittedly completed more than 240 days in the preceding 12 months of his disengagement and he was thus entitled to the protection of the provisions of Section 25-F of the Industrial Disputes Act. The disengagement of the petitioner thus is violative of the provisions of Section 25-F.

13. That being so even the purported notice issued to the petitioner (Mark-A) was against the principle of 'last come first go' and as such against statutory provisions of Section 25-G. Even if notice is assumed to be legally sustainable though it has been held not to be, the disengagement of the petitioner was violative of the provisions of Section 25-G of the Act.

14. The Ld. counsel for the respondent Board has also placed reliance upon the judgment of Hon'ble Supreme Court titled as Bharat Sanchar Nigam Ltd. vs. Man Singh (2011 STPL (Web) 966) to contend that even if the order of retrenchment is passed in violation of Section 25-F, rather than reinstating the petitioner he should be granted compensation to meet the ends of justice. No doubt the judgment of the Hon'ble Supreme Court does talk in the aforesaid terms but in the present case over and apart from the violation of Section 25-F the respondent Board has retained innumerable workmen who had come to be engaged after the petitioner and were junior to the petitioner. The retention of persons junior to the petitioner thus gives him a right to claim parity with those who had subsequently joined the respondent Board. In fact in place of the petitioner it was the junior who had to give way, at the time of retrenchment. The provisions of Section 25-G are statutory and binding in nature. The ratio of the aforesaid judgment of the Hon'ble Supreme Court is thus not applicable to the fact and circumstances of the present case.

15. The action of the respondent thus is palpably illegal and against the mandate of Section 25-F and 25-G of the Act. Consequently the respondent is directed to re-engage the petitioner. The petitioner shall be entitled to seniority and continuity from the date of his illegal

disengagement. However due to the peculiar circumstances discussed above the petitioner is not entitled to any back wages. The issue decided accordingly.

ISSUE NO.2

16. Nothing has been urged and brought to my notice how the petitioner has no locus standi from this court. The issue is decided against the respondent.

RELIEF

17. For all the aforesaid reasons discussed above the reference is allowed partly. The respondent is directed to re-engage the petitioner forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 7th day of January, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala,

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 471/2009

Date of Institution : 14.9.2009

Date of decision : 25.11.2011

Smt. Matru Devi W/o Shri Kishan Dev, R/o Village & P.O. Kariyundi, Tehsil Pangi, Distt. Chamba, H.P.

...Petitioner

Versus

The Executive Engineer, HPPWD Division Killar, District Chamba, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Gaurav Sharma, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Matru Devi W/o Shri Kishan Dev by The Executive Engineer, HPPWD Division Killar, Distt. Chamba, (H.P.), w.e.f. Year, 2005 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that she was appointed as a beldar by the respondent in the year 1996 in HPPWD Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. Thereafter she worked continuously and uninterruptedly till the year 2005, when her services were terminated without any reason, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas her services were disengaged.

4. The petitioner thus contends that her termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of her termination.

5. The petitioner thus seeks her re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections vis-à-vis maintainability, estoppel and the reference being hit by the vice of delay and laches.

7. On merits it is the case of the respondent that the petitioner had been continued till the year 2005 and thereafter the petitioner had abandoned her job and thereby also lost her seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 15.7.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. year, 2005 is violative in the provisions of Section 25-F, & 25-G of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

2. Whether the petition is not maintainable, as alleged. If so, its effect thereto.

. .OPR

3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, its effect thereto.

. .OPR

4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS**ISSUE No. 1**

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating her services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in October, 2005. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence.

It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled *State of H.P. vs. Bhatag Ram and Anr.* (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner have been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as her own witness has deposed that some of juniors to her were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, she was entitled to the protection of provisions of Section 25-G of the Act and the respondents were duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as *State of H.P. vs. Prem Lal* 2010 (3) Him. LR 1363 and *State of H.P. & Ors. vs. Chet Ram* (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. She is ordered to be re-engaged forthwith. She shall be entitled to seniority and continuity from the date of her illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

ISSUE NO. 2

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. No doubt the petitioner was terminated in the year 2005 and the failure report was submitted by the conciliation officer on 4.9.2008. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act donot strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently hasheld that the provisions of the Limitation Act would notapply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of her illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 661/2008

Date of Institution : 29.10.2008

Date of decision : 28.11.2011

Shri Mohan Lal s/o Sh. Bhagi Rath, Village Padalsa, P.O. Brang, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Petitioner.

Versus

The Managing Director, H.P. State Tourism Development Corporation Ltd. Ritz Annexe Shimla-1, H.P.

. .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Lokesh Kapoor, adv.

For the Respondent. :

Sh. T.C. Sharma, adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Mohan Lal s/o Sh. Bhagi Rath by the Managing Director, H.P. State Tourism Development Corporation Ltd. Ritz Annexe Shimla-1, H.P. w.e.f. 23.6.2006, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he was engaged as a daily waged Utility worker at Café Shiraj Mandi in the year 1989. He worked there till the year 1992. Thereafter he was transferred to Hotel Mandav. He thereupon worked as such till the year 1994. Thereafter due to some domestic problems the petitioner remained on leave. When he reported back on duty, he was not allowed to join. Eventually, the head of office, on the representation of the petitioner reengaged the petitioner in the newly constructed Hotel Hill Top, Swarghat, Distt. Bilaspur. He thereafter continuously worked till 2001 and even the service of the petitioner had been declared as a permanent daily wager. The Manager of the said Hotel had however illegally pressurized the petitioner to sign some agreement with him.

3. The petitioner was thereafter engaged on Lake View Café Bilaspur in 2006. Now his service was again disengaged. On his making representation G.M. of the concerned unit had reported on 3-8-2006 that the petitioner has a habitual absconder and has deserted his job at his own will. The petitioner was unnecessarily harassed by the respondent, whenever he applied for leave.

4. The termination of the petitioner is stated to be violative of the provisions of Section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act).

5. It is further the case of the petitioner that persons junior to him had been retained by the department and as such his disengagement is also violative of Section 25-G of the Act. The petitioner thus prays for his reengagement with all consequential benefits.

6. While contesting the claim the respondents have inter alia raised preliminary objections that the reference is not maintainable as the petitioner is a habitual absentee/absconder and had abandoned the job on several occasion and that he was lastly engaged on contract basis.

7. It is further the contention of the respondent that it is a case of abandonment and not of illegal termination as the petitioner did not join his duty after expiry of his sanctioned leave and as such his services stood automatically terminated. It is also averred that the petitioner being a contract appointee, his services are governed according to the terms and condition of the agreement, entered inter-se the parties.

8. On merits it is the case of the respondent corporation that the petitioner worked with them from June, 1989 till 1994 when he left the job of his own and that too without any intimation to the respondent. The petitioner was thereupon engaged the petitioner during July, 1998 and he worked till August, 2000. Thereafter the petitioner remained willfully absent and abandoned the job as is evident from the mandays annexure R1. Thereafter, per the respondent the petitioner was given contract appointment vide agreement annexure R2 and R3. Thereafter his contract was not renewed as the petitioner remained willfully absent on several occasions and abandoned job frequently of his own.

9. It is further averred by the respondent that the petitioner was engaged on contract basis for 89 days for seasonal work and his contract was renewed later on the same terms and conditions (annexure R3) and as such as per conditions No. 3,5,7 & 8 the services of the petitioner stood automatically terminated and as such the question of complying the provisions of the Act do not arise. The respondents thus pray for the dismissal of the reference.

10. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

11. I notice that on 8-6-2008 the following issues came to be framed :

1. Whether the termination of the petitioner w.e.f. 23-6-2006 is in violation of the provisions of the Section 25-F of the Industrial Disputes Act, 1947, as alleged. If so, to what relief the petitioner is entitled to?
.....OPP.
2. Whether the petitioner was a contract employee, as alleged by the respondent. If so, its effect thereto?
.....OPR.
- 3 Relief.

12. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : No, however the respondent shall afford opportunity to the petitioner as and when fresh hands are engaged, as per the mandate of Sec. 25-H of the Act.
Issue No.2 : Yes
Relief. : Dismissed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1 & 2

13. Both the issues are being discussed together as they are correlated and intermingled.

14. Admittedly the petitioner did not work with the respondent after September, 2000. He was offered fresh engagement in the year 2006. No doubt between 1989 till 2000 the petitioner has worked with the respondent corporation but even during the said interregnum he did not work between 1994 till 1998.

15. The dispute thus is relegated to his disengagement allegedly w.e.f. 23-6-2006. Lastly the petitioner had been reengaged vide Mark-A. The petitioner was engaged on contract basis starting from 19th April, 2006 to 19-7-2006. The petitioner has also admitted that he had signed an agreement with the Corporation in the year 2006. Thereafter he was sent home. The respondent on the other hand pleaded that despite having been offered fresh appointment on contractual basis the petitioner deserted work. The perusal of the mandays Ex. RW1/A also shows that in the year 2006 the petitioner has worked only from April to June and had completed 66 days alone. Even the petitioner had not completed 240 days in the calendar year and nor had unfortunately completed 240 days in the preceding 12 months of his disengagement. From the mandays on record it further transpires that apparently the petitioner also did not work for the entire period of the contract. He had seemingly left job mid way. Since the petitioner had not completed 240 days in the preceding 12 months of his disengagement, the protection of the Section 25-F was not available to the petitioner. It can not thus be said that the disengagement of the petitioner w.e.f. 23-6-2006 was violative of the provisions of Section 25-F of the Act. The petitioner had admittedly entered into a contract with the respondent Corporation.

16. It thus emerges from record that the petitioner had come to be engaged on contract basis afresh in the year 2006 and the same was not renewed subsequently by the corporation. Unfortunately the petitioner had not even completed 240 days in the preceding 12 months of his disengagement, entitling him to the protection of Sec. 25-F. The infraction of the other provisions of the Act have also not been proved.

17. Both the issues are thus accordingly decided in favour of the respondent and against the petitioner. However, the respondent shall afford opportunity to the petitioner as and when fresh hands are engaged, as per the mandate of Sec. 25-H of the Act.

RELIEF

18. For the reasons discussed hereinabove supra, I do not find any merit in the claim and the same is dismissed. However, the respondent shall afford opportunity to the petitioner as and when fresh hands are engaged, as per the mandate of Sec. 25-H of the Act. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 28th day of Nov., 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala,

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 138/2006

Date of Institution : 30.8.2006

Date of decision : 29.11.2011

Shri Mohan Lal S/o Shri Soju Ram, R/o Village Thuji, P.O. Barot, Tehsil Padhar, District
Mandi, H.P.

...Petitioner

Versus

The Additional Superintending Engineer, HPSEB Division Joginder Nagar, District Mandi,
H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent :

Sh. Abhishek Lakhanpal, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the action of the Additional Superintending Engineer, HPSEB Division, Joginder Nagar, District Mandi, H.P. not to regularize the services of Shri Mohan Lal S/o Shri Soju Ram workman after completion of 10 years of continuous service w.e.f. 1989 is legal and justified? If not, what relief of service benefits the above aggrieved workman is entitled to?”

2. The short and simple case espoused by the petitioner in the statement of claim is that he was engaged on daily wage basis by the respondent on 25.10.1982 and he worked continuously as such 2.9.1997. During the said period he had completed 240 days in each calendar year without any break and his services have been regularized by the respondent after completion of 15 years as work charge T-Mate.

3. It is further the case of the petitioner that in view of the Mool Raj Upadhyay's case the petitioner had to be brought on work charge status w.e.f. 1.1.1994 in the lowest grade of the corresponding category. Per the petitioner he had completed the aforesaid 10 years of continuous service as on 31.12.1993 and as such he was entitled to be brought on work charge status w.e.f. 1.1.1994, whereas the services of the petitioner had been regularized by the respondent on 3.9.1997. The petitioner has also sought support in this behalf from the Notification issued by the State on 11th of July, 1995.

4. It is further the case of the petitioner that the persons junior to him had been regularized by the respondent Board as work charge T-Mate on the basis of an interview held on 18.3.1989. Some of them being Sher Singh, Dharam Singh, Mohan Singh, Sant Ram etc. A few of his junior had been regularized by the respondent on 24.1.1992.

5. The petitioner thus claims that he be regularized from the date his juniors had been regularized in the year 1989, 1992 or 1.1.1994 as per notification dated 11.7.1995 along with all consequential benefits.

6. While contesting the claim the respondents have inter alia raised the preliminary objections vis-à-vis maintainability, non-joinder and mis-joinder of necessary parties and the petition is barred by limitation.

7. On merits it is the case of the respondent that the petitioner was not engaged on 20.1.1983. However, per the respondents the petitioner had not worked continuously during the said period. Further, per the respondent the petitioner had been appointed as work charge T-Mate w.e.f. 3.9.1997 and transferred to the Superintending Engineer (OP) Circle HPSEB Kullu w.e.f. 3.9.2000 as per his eligibility and availability of post and the petitioner was superannuated on 30.4.2002 after having attained the age of 60 years. Per the respondent the petitioner had been regularized as per the relevant provision of law.

8. It is further averred by the respondent that the alleged juniors had been brought on work charge as T-Mate as per availability of post and on the basis of open interview held by the respondent Board. The candidates who had obtained higher merit in the interview had been selected and as such it cannot be said that the juniors had been regularized over and above the petitioner. The respondents thus pray for the dismissal of the reference.

9. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

10. On 8.7.2010 the following issues had been come to be framed by this Court.

1. Whether the regularization of the services of petitioner w.e.f. 3.9.1997 is against the policy framed by the State of H.P., as alleged. . .OPP
2. Whether the action of the respondent is illegal and unjustified, as alleged. If so to what relief, the petitioner is entitled to? . .OPP
3. Whether the petition is not maintainable, as alleged. . .OPR
4. Whether the petition is barred by time, as alleged, If so its effect thereto? . .OPR
5. Relief.

11. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
 Issue No. 2 : Yes
 Issue No. 3 : No
 Issue No. 4 : Allowed partly as per operative part of the award.
 Relief :

REASONS FOR FINDINGS

ISSUES No. 1 and 2

12. Both the issues are being taken up together for discussion as they are correlated and intermingled.

13. The short question arising for determination in the present reference is whether the petitioner was entitled to be regularized w.e.f. 1.1.1994, as claimed by the petitioner or not.

14. The question of regularization as per the scheme for betterment (appointment) regularization of muster roll/daily wage worker in Himachal Pradesh propounded by the State of H.P. has finally been set at rest in a judgment titled as State of H.P. vs. Gehar Singh reported in 2006 LHLJ (SC) 363. The Hon'ble Supreme Court after taking into consideration the policy so framed by the State and approved by the Hon'ble Supreme Court in Mool Raj Upadhyay's case eventually held that in the first stage that is after the completion of 10 years or more continuous service (with a minimum of 240 days in each calendar year) a daily wager was entitled to be a work charge employee. However, they were to be regularized in the second stage in a phased manner on the basis of seniority cum suitability including physical fitness.

15. Taking in view the aforesaid ratio settled and keeping in view the factual matrix of the present case it cannot be disputed that as far as not bringing the petitioner on the regular cadre is concerned, no fault can be found with the action of the respondent as the regularization had to be done subject to availability of post. However the action of the respondent Board in not bringing the petitioner on work charge immediately after completion of 10 years of continuous service is certainly suspect. In the first stage the petitioner had to be brought on work charge immediately on completion of 10 years. The mandays of the petitioner categorically shows that the petitioner had completed 240 days in all the years and the same is also not disputed by the Board. Their only plea is that for want of post the petitioner could not be regularized till the year 1997. The regularization thereupon was to be dependent upon the availability of a post. The petitioner having been engaged on 25.10.1982 thus was to be brought on work charge w.e.f. 1.1.1994. Though his regularization thereupon was to be on the basis of the availability of a post. To this limited extent the action of the respondent is bad in the eyes of law. As far as the claim of the petitioner vis-à-vis other juniors who were brought on work charge in the year 1989 and 1992 is concerned, no fault can be attributed to the respondent Board as the same was by way of an open interview and was subject to availability of posts at that time. The Executive Engineer who has appeared as RW1 has though deposed that till 1996 no posts were available and only thereafter subject to availability of post the petitioner was brought on work charge. I am afraid in view of Gehar Singh's judgment referred hereinabove supra the petitioner atleast was entitled to be brought on work charge immediately after completion of 10 years, though he was to be regularized subsequently on availability of a post. To this limited extent the action of the respondent is bad. The issue is accordingly decided partly in favour of the petitioner. The petitioner is stated to have died. That being so any pecuniary benefit arising out of the present reference, if any shall, be released to the LR's of the deceased.

ISSUE NO.3

16. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE NO.4

17. No doubt the failure report was submitted by the conciliation officer on 29.9.2004. In between the petitioner had raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence led by the respondent as to how the claim was time barred and not maintainable, the onus of which was heavy on them. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the

onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

18. For the foregoing reasons discussed hereinabove, the reference is allowed partly. It is held that the petitioner was entitled to be brought on work charge status w.e.f. 1.1.1994 as per ratio of Gehar Singh's judgment discussed hereinabove supra. As sequel thereto the petitioner shall be entitled to all consequential benefits arising thereto after having been brought on work charge w.e.f. 1.1.1994. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 29th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
H.P. Industrial tribunal-Cum-
Labour Court Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref: No. : 138/2009

Date of Institution : 27-2-2009

Date of decision : 7-1-2012

Sh. Mohan Singh s/o Sh. Toder Ram, Village Nehari, P.O. Panjalag, Tehsil Ladbhrol, Distt. Mandi, H.P.

...Petitioner.

Versus

The Executive Engineer, HPSEB Electrical Division, Joginder Nagar, Distt. Mandi, H.P.

...Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. N.L. Kaundal, A.R.

For the Respondent. :

Sh. Abhishek Lakhanpal, adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Mohan Singh s/o Sh. Toder Ram by the Executive Engineer, HPSEB Electrical Division, Joginder Nagar, Distt. Mandi, H.P. w.e.f. 3.7.2000. without complying the provisions of Industrial Disputes Act, 1947 while juniors to him have been retaining is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”

2. The petitioner has averred in the statement of claim that he was engaged by the respondent on daily wage basis as a beldar on 8-2-1999 and he worked intermittently till 2-7-2000 along with other workmen. Vide a letter dated 22-6-2000 the services of the petitioner were dispensed with w.e.f. 3-7-2000 by the Assistant Engineer, Lad Bharol Sub Division.

3. Further per the petitioner the respondents have retained persons junior to him and the said fact is clear from the provisional seniority list of daily wagger prepared by the respondent on 5-9-2002 whereby many of his junior have been shown to be working with the respondent, some of them being Man Singh, Prithi Chand, Safi Mohammad, Durga Dass, Gian Chand, Raj Kumar, Tara Chand and Chattar Singh. All the aforesaid workmen though were junior to the petitioner, however they were not retrenched on 3-7-2000.

4. It is further averred by the petitioner that after his disengagement the respondents have engaged fresh hand in the year 2001-2002 namely Om Prakash s/o Sh. Dalip Singh, Birbal s/o Sh. Shiv Pal, Subhash Chand s/o Sh. Duni Chand and Sh. Sanjay Kumar s/o Sh. Amar Singh but no opportunity was afforded to the petitioner for reengagement.

5. After the illegal disengagement of the petitioner he had preferred an original application before the Hon'ble Administrative Tribunal and the same was dismissed on the ground of jurisdiction with liberty to approach the competent forum and thereupon the petitioner had raised the demand notice dated 1-6-2006 and hence the present reference. The action of the respondent is thus stated to be violative of the provision of the Industrial Disputes Act (hereinafter referred to as the Act), more particularly Section 25-G and 25-H.

7. The petitioner thus claim his reengagement with all consequential benefit.

8. While contesting the claim the respondents have raised preliminary objections vis-à-vis maintainability, locus standi and cause of action.

9. On merits it is averred by the respondent that the petitioner had joined the replying respondent as a daily waged beldar on 8-2-1999 and he served till 2-7-2000 for the works which were casual in nature and for a specified period. When the work was completed the services of the petitioner had automatically come to an end. However prior notice was issued to him. The copy of the mandays and notice so issued to the petitioner has been annexed alongwith. The rest of the contents of the statement of claim are denied. The respondents thus pray for the dismissal of the claim.

10. While filing the rejoinder the petitioners controverted the averments in the reply and further reiterated those in the statement of claim.

11. I notice that on 6-4-2011 the following issues came to be framed by this Court.

1. Whether the termination of the petitioner w.e.f. 3-7-2000 is violative of the provisions of Section 25-G and 25-H of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to?
.... OPP.
2. Whether the reference is not maintainable, as alleged. If so, to what effect thereto?
..OPR.
3. Relief.

12. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No. 2 : No

Relief. : Allowed partly, as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

13. No doubt as per mandays Ex. RW1/B the petitioner had not completed 240 days in the preceding 12 months of his disengagement. The fact remains that the petitioner was initially engaged on 8-2-1999. Admittedly as per the seniority list Ex. PW1/D persons engaged after 8-2-1999 that is when the petitioner was engaged are still working with the respondent. No doubt many of them have been reengaged in pursuance to the Court orders but still they continue to be juniors to the petitioner. One Dina Nath reflected at serial No.73 in the seniority list was engaged on 21-11-2001. One Ram Sing and Bhag Singh have been engaged in the year 2003. The respondent on their own should have offered engagement to the petitioner after junior had been reengaged even if it was done in pursuance to the order of the Court. Even otherwise some fresh hands were engaged after the disengagement of the petitioner. Even at that time no offer was apparently made to the petitioner. Somewhere in the year 2001 a tentative offer was made to the petitioner vide Ex. PW1/C but even the same was not adhered to by the respondent. The respondent thus did not follow the statutory provisions of Section 25-G and 25-H of the Act.

14. It is by now well settled that even if worker had not completed 240 days in the preceding 12 months of his disengagement he is entitled to the protection of Section 25-G and 25-H. In this behalf reference may ably be made to the ratio laid down by the Hon'ble Supreme Court in case titled as Central Bank of India vs. S. Satyam (1996 (5) SCC 419) and Harjinder Singh vs. Punjab State Ware House Corporation (2010 (3) SSC 192) and recent Judgements of our own Hon'ble High Court titled as State of H.P. and other vs. Chet Ram (CWP No. 3887 / 2011 decided on 3-6-2011) and State of H.P. and another vs. Prem Lal (2010 (3) Him L.R. 1362). One more thing which strikingly comes to the fore is that the respondent had issued notice disengaging the petitioner while taking the assistance of Rule 14 (2) of the certified standing order. The said order was purportedly issued on 21-1-2000. The said notice cannot be countenanced in any manner. More particularly because the respondent Board itself, has specifically pleaded in umpteen number of cases that the Board has been exempted from the operation of the standing orders w.e.f. 11-9-1985. Though this was not been pleaded in the present case but judicial notice can be taken of the fact, as this defense is invariably raised by the Board in all cases pending before this Court.

15. For all the reasons discussed above it is held that the disengagement of the petitioner is violative of the provisions of Section 25-G and 25-H of the Act, as has been discussed hereinabove supra. Consequently the respondent is directed to reengage the petitioner. He shall be entitled to continuity and seniority from the date of his illegal disengagement. Seeing to the peculiar circumstances discussed above he shall not be entitled to any backwages. The issue is thus decided accordingly in favour of the petitioner and against the respondent.

Issue No. 2

16. In view of what has been held under the foregoing issues, the petition is perfectly aintainable to the extent the same relates to the relief the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference in not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

17. For all the aforesaid reasons discussed above the reference is partly allowed. Consequently the respondents are directed to reengage the petitioner forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal disengagement, though except backwages. The reference is decided in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 7th day of Jan., 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 53/2008

Date of Institution : 22.2.2008

Date of decision : 30.12.2011

Shri Naresh Kumar S/o Shri Sant Ram, R/o Village Dhelgi, P.O. Balag, Sub Tehsil Nihri,
Distt. Mandi, H.P.

. .Petitioner

Versus

The Executive Engineer, I&PH Division Karsog, Distt. Mandi, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. N.L. Kaundal, AR.

Sh. Vijay Kaundal, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether transfer of services of Mr. Naresh Kumar S/o Shri Sant Ram by the Executive Engineer, IPH Division Karsog, Distt. Mandi, (H.P.) to the Executive Engineer, IPH Division Sunder Nagar, Distt. Mandi (H.P.) through verbal orders, thereby resulting in subsequent termination, w.e.f. 1.11.2000, while his juniors have been kept, is legal and justified? If not what amount of due wages, arrears of back wages, seniority past service benefits and compensation the above workman is entitled to?”

2. The case set up by the petitioner is that he had come to be appointed as a daily wager by the respondent in I&PH Sub Division Nihri, District Mandi on September, 1998 along with other workmen including one Dharam Pal daily waged, Parkash Chand Fitter and Khem Raj Beldar. He continued to work as such till 31.10.2000 and in between the respondent had given fictional breaks to the petitioner. His services came to be verbally dispensed with on 1.11.2000 and that too without any prior notice, charge sheet or compensation.

3. During the course of conciliation it had come to the notice of the petitioner that his services had been transferred by the department from I&PH Sub Division Nihri to I&PH Sub Division Sunder Nagar. However no transfer order dated 20.9.2000 had been received by him. The petitioner had completed 235 days w.e.f. 1.1.2000 to 31.8.2000 despite fictional breaks given to him. However the department had terminated his services intentionally and deliberately so as not to allow him to complete 240 days. One Brij Lal S/o Damodar Dass who was also working at Nihri at the relevant time was neither transferred nor his services were dispensed with by the respondent.

4. It is further the case of the petitioner that the respondents have retained persons junior to him like one Gokal Ram and Keshav Ram and as such violated the principle of ‘last come first go’ as envisaged under section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The respondents have also resorted to fresh recruitment and as such even violated the provisions of Section 25-H of the Act.

5. The petitioner had initially approached the Hon’ble Administrative Tribunal in respect of his illegal termination by filing an O.A. but the same was dismissed for want of jurisdiction, with liberty to the petitioner to approach the competent forum and thereupon he had raised the industrial dispute on 15.6.2006.

6. The termination of the petitioner was further stated to be in violation of the provisions of Section 25-N and was also in violation of the provisions of Section 25-T and 25-U of the Act. The petitioner thus prays that his termination be set aside and quashed. He be reinstated in service along with backwages and all consequential benefits.

7. While contesting the claim the respondent inter alia raised the preliminary objections vis-à-vis maintainability, non-joinder of parties, limitation and the termination of the petitioner being not within the definition of the “retrenchment”, as the petitioner had reportedly abandoned work of his own. The administrative control of G.P. Bandli and Balag along with scheme had been transferred to the I&PH Division Sunder Nagar and the petitioner did not join for work in the I&PH Division Sunder Nagar and thereupon abandoned job.

8. On merits it is the case of the respondents that the petitioner did work with them till 31.10.2000, but it was intermittent in nature. The respondents never gave any fictional breaks to the petitioner. His services were never terminated, rather he left the job of his own sweet will.

9. It is further the case of the respondent that the administrative control of G.P. Bandli and Balag was transferred from I&PH Division Karsog to I&PH Division Sunder Nagar. In the present case no transfer had been made, but the petitioner was also shifted to I&PH Sub Division, Sunder Nagar, because the scheme on which he was working had also been transferred to I&PH Division Sunder Nagar. Theoretically and practically the petitioner was to work on the same scheme, but the petitioner had not reported for duty on the said scheme. It is thus prayed by the respondent that the petitioner is not entitled for any relief.

10. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

11. I notice that on 11.11.2008 the following issues came to be framed by my Ld. Predecessor.

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the service of the petitioner was never terminated but he had abandoned the job on his own. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Relief. . .OPR

12. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
 Issue No.2 : No
 Issue No.3 : No
 Relief : Allowed as per operative part of the award

REASONS FOR FINDINGS

ISSUES No. 1 and 2.

13. Both the issues are being taken up together for discussion as they are co-related and intermingled.

14. The petitioner's claim simplicitor is that his services were terminated on 1.11.2000 verbally and without any notice. On the contrary it is the stand of the respondent that the administrative control of G.P. Bandli and Balag had been transferred to I&PH Division, Sunder Nagar and the petitioner had been directed to report for duty in I&PH Division Sunder Nagar along with the scheme. He failed to do so and as such abandoned job of his own.

15. The case of the respondent is thus of abandonment while the petitioner claimed that his services were terminated illegally. The petitioner in furtherance of his case has appeared as his own witness. The respondent has further placed on record an office order dated 20.9.2000 whereby the administrative control of G.P. Bandli and Balag Division (Ex. RW1/C) has been transferred to I&PH Sub Division Sunder Nagar, his mandays Ex. RW1/B and the details of the workmen who were alleged to be transferred from I&PH Division Karsog to I&PH Division Sunder Nagar. The respondents on the other hand have examined the Executive Engineer Sh. M.S. Thakur as RW1. He

has reiterated the stand taken by the respondents that the administrative control of G.P. Bandli and Balag was transferred to I&PH Division Sunder Nagar on 20.9.2000 but the petitioner did not report for duty on the scheme. Chaman Lal and one Brij Lal are still working in I&PH Sub Division Nihri whereas the petitioner left job at his own sweet will. Such abandonment would not fall within the definition of the “retrenchment”.

16. The respondents have not produced anything on record to show that the services of the petitioner had been transferred to I&PH Division Sunder Nagar along with some scheme. No documentary evidence has been placed on record in this behalf. There is no iota of evidence to remotely show that the petitioner had been informed of the change of his service conditions or that he was to report for duty at I&PH Division Sunder Nagar. The respondent has placed on record Ex. RW1/C, which is an office order showing that the administrative control of the work falling in G.P. Bandli and Balag was transferred to I&PH Sub Division Sunder Nagar. It also does not show that some scheme was transferred to I&PH Division Sunder Nagar. In fact some part of the area earlier following in I&PH Sub Division Nihri was transferred to I&PH Sub Division Sunder Nagar. It is not that a scheme had been transferred from one Sub Division to other. The plea of the respondents that the petitioner was engaged for a specific scheme, which itself was transferred to I&PH Sub Division Sunder Nagar is thus fallacious and not worthy of credence. Even for the sake of arguments if it is believed that the scheme was transferred as is the case of the respondent but there is no evidence on record remotely suggesting that the services of the petitioner were also transferred to the I&PH Sub Division Sunder Nagar or he was ever asked to report for duty in the new Sub Division. RW1 Shri M.S. Thakur has also feigned ignorance whether a list of workmen was given to the I&PH Sub Division Sunder Nagar of the erstwhile workers working in Bandli and Balag. Admittedly no explanation was sought from the petitioner regarding his abandonment.

17. Even if it is to be assumed that the petitioner was to go with the scheme, apparently no notice of change as is contemplated under Section 9-A of the Industrial Disputes Act was ever given to the petitioner. The fact of non compliance of the provisions of Section 9-A of the Act would render the change in condition of service void ab initio. As far as the question of abandonment is concerned, it is now well settled that the plea of abandonment has to be proved as a question of fact. There is no evidence on record to prove so. Moreover, since the said plea is itself contradicted by the respondents themselves that it was a transfer of the scheme to I&PH Sub Division, Sunder Nagar, it cannot be taken at its face value. I am afraid the plea of abandonment is also not sustainable in these circumstances.

18. It is thus to be held that the petitioner was neither engaged in a specific scheme nor any scheme had been transferred to I&PH Sub Division Sunder Nagar. The petitioner too was never shifted along with the scheme and thereupon had not even abandoned job. The services of the petitioner came to be terminated by the respondent in the most illegal manner, being in derogation to the mandatory provisions of the Industrial Disputes Act. His termination was not only in violation of the provisions of Section 25-F but also was a result of an unfair labour practice. It was also in violation of the provisions of Section 9-A of the Act. The termination of the petitioner was thus arbitrary and illegal.

19. Consequently for all the aforesaid reasons, the termination of the petitioner is set aside and quashed. He is ordered to be reinstated forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal termination. In the peculiar facts and circumstances of the case the petitioner is not held entitled to any back wages.

ISSUE No. 3

20. The provisions of the limitation Act do not strictly apply to the dispute arising under the Act. Nonetheless the claim may be categorized to be a stale claim, if the right of workmen has

become stale or died its own death. In the case in hand, immediately after his termination the petitioner had approached to the Hon'ble Administrative Tribunal by filing an O.A. for the redressal of his grievances. The said original application came to be dismissed on the point of jurisdiction with liberty to approach the appropriate authority under the provisions of the Act. At the best it was a choice of the wrong forum. Thereafter the petitioner took recourse to the provisions of the Act. It cannot be said that the claim preferred by the petitioner was stale.

21. Even if the provision of the limitation Act had been applicable the petitioner would have got allowance for having approached a wrong forum. Thus it cannot be said that the petitioner would have lost the right and the remedy because of the wrong choice of forum. Issue is accordingly decided against the respondent.

RELIEF

22. For all the aforesaid reasons discussed above the termination of the petitioner is set aside and quashed. Since the petitioner has died he cannot be ordered to be reinstated. Consequently the respondents shall pay one time compensation amounting to Rs.1 lac in lieu of his re-engagement to the LR's of the deceased or offer appointment to his widow in his place. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of December, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 448/2009

Date of Institution : 28.8.2009

Date of decision : 06.01.2012

Shri Naresh Kumar S/o Shri Jai Dev, R/o Village Upper Pandoh, P.O. Pandoh, Tehsil & District Mandi, H.P.

....Petitioner

Versus

The Divisional Manager, HP State Forest Corporation, Forest Working Division, Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. T.C. Sharma, Adv.

For the Respondent :

Sh. Pardeep Parmar, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Sh. Naresh Kumar S/o Shri Jai Dev who was employed as daily wages Chowkidar/Field man by The Divisional Manager, HP State Forest Corporation, Forest Working Division, Mandi, (HP), w.e.f. 1.12.2005 on account of attaining the age of 58 years instead of 60 years, as well as without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages till he attains the age of superannuation, i.e. 60 years, seniority, past service benefits and consequential/pensionary benefits, the above ex-worker is entitled to?”

2. The short and simple case set up by the petitioner in the statement of claim is that he was engaged as a Chowkidar/Field man on daily wages by the respondent in October, 1989 and he continued working as such till 30th of November, 2005 and he was retired at the age of 58 years. The respondent had illegally and arbitrarily retired the petitioner at the age of 58 years instead of 60 years, which was his age of retirement being a daily wager. The petitioner had completed 240 days in each calendar year.

3. Ever since his appointment i.e. October, 1989 the petitioner had worked as a Chowkidar/Field man at Pandoh depot under the Forest Working Division Mandi and rather than regularizing the services of the petitioner after having put in more than 10 years of continuous service, the petitioner was retired at the age of 58 years on 30th November, 2005, though he was due to retire at the age of 60 years.

4. The respondent has also not regularized the services of the petitioner after completion of 10 years continuous service, as per the policy of the State.

5. The petitioner thus prays that the action of the respondent in retiring the petitioner at the age of 58 years be set aside and quashed. He be paid all back wages w.e.f. 1.11.2005 to 30.11.2007. The respondent may also be directed to regularize the services of the petitioner after completion of 10 years of continuous service, as per the policy of the State.

6. While contesting the claim the respondent has raised a preliminary objection that the claim is not maintainable. It is further submitted that the petitioner had been superannuated on attaining the age of superannuation in accordance with law.

7. On merits it is not disputed that the petitioner has worked with the respondent w.e.f. October, 1989 till 30th of November, 2005. The petitioner is however stated to have not completed 240 days in the year 1989. The petitioner is however stated to have been superannuated rightly at the age of 58. It is denied that the petitioner was entitled for regularization, as alleged. The respondent thus prays for the dismissal of the claim.

8. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

9. On 8.7.2010 this Court has framed the following issues:

1. Whether the act of the respondent in retiring the petitioner from service at the age of 58 years w.e.f. 30th November, 2005 is illegal and unlawful, as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

2. Whether the claim petition is not maintainable, as alleged. If so, its effect.

. .OPR

3. Relief.

10. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No.2 : No

Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

11. Admittedly the petitioner has worked with the respondent Corporation w.e.f. October, 1989 till 30.11.2005. The mandays placed on record by the petitioner vide Ex. PW1/B, which is not primarily disputed by the respondent also show so. The petitioner has worked continuously and uninterruptedly till his superannuation on 30.11.2005 ordered vide Ex. PW1/A. Admittedly the petitioner has been superannuated at the age of 58 years.

12. The petitioner has also placed on record a notification dated 10.5.2001 whereby after the publication of the said notification in the Rajpatra a workmen appointed after the publication of the notification was to retire in the afternoon of the last day of the month in which he attains the age of 58 years.

13. The Office Manager, HP State Forest Corporation Shri Kundan Lal Sharma, who has appeared as RW1 has deposed that the petitioner was retired on attaining the age of superannuation on 30.11.2005. Before his superannuation the matter was referred to the Director (North) for seeking clarification with regards to the notification vide letter dated 9.11.2005 but no instructions were received from the higher office and as such after attaining the age of 58 years the petitioner was retired.

14. The perusal of the notification issued by the State of Himachal Pradesh whereby Rule 56 of the FR was amended while exercising powers under Article 39 of Constitution of India a workmen/Class-IV government servant was ordered to be superannuated after completion of 58 years. It has been placed on record as Mark 'A'. Prior to the said amendment the age of retirement of workmen/class-IV was 60 years. A bare perusal of the amended notification shows that as per the amendment so effected by the State of Himachal Pradesh only a workman appointed on or after the date of publication of the notification in the Rajpatra shall retire from service on the afternoon of the last day of the months in which he attains the age of 58 years. The plain reading of the amendments signifies that the amended notification was to be effective prospectively i.e. a workman/class-IV initially appointed on or after the publication of the notification were to retire at the age of 58 years. The workman who had been engaged prior to the year 2001 were thus to retire at the age of 60 years.

15. Admittedly the petitioner had been engaged initially in the year 1989. The petitioner was thus engaged prior to the notification issued in the year 2001 and as such the date of superannuation had to be 60 years. It is also not the case that the petitioner had been regularized as a class-IV after the year 2001. The age of superannuation of the petitioner thus had to be reckoned at 60 years and not 58 years as has been done by the respondent. The action of the respondent in superannuating the petitioner after completion of 58 years is thus patently illegal and ex-facie against the rules framed by the State.

16. Though the petitioner also claims regularization but unfortunately the reference sent to this Court only pertains to the superannuation of the petitioner at the age of 58 years. By now it is

well settled that the powers of this Court are confined to the terms of reference, so received from the appropriate Government. This Court cannot venture into the question of regularization of the petitioner at this stage. However the superannuation of the petitioner at the age of 58 years is held to be illegal. It is consequently set aside. The order dated 30.11.2005 passed by the respondent is thus set aside and quashed. As a sequel thereto it is directed that the petitioner shall be deemed to have been in service till 30.11.2007 i.e. till the age of attaining 60 years. The petitioner shall be deemed to have been superannuated w.e.f. 30.11.2007. He shall be entitled to all consequential benefits including salary w.e.f. 1.12.2005 till 30.11.2007. The same shall be paid to the petitioner within a period of 90 days from the passing of the award, failing which the respondent shall pay interest @ 9% w.e.f. 30.11.2005 till its realization. The issue in hand is thus decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

17. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

18. For all the aforesaid reasons discussed above the reference is allowed. The order dated 30.11.2005 passed by the respondent is set aside and quashed. The petitioner shall be considered in service till 30.11.2007 i.e. till the age of attaining 60 years. The petitioner shall be considered to have superannuated w.e.f. 30.11.2007. He shall be entitled to all consequential benefits including salary w.e.f. 1.12.2005 till 30.11.2007. The same shall be paid to the petitioner within a period of 90 days from the date of award, failing which the respondent shall pay interest @ 9% w.e.f. 30.11.2005 till its realization. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 6th day of January, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)

Ref. No. : 370/2009

Instituted on : 18.7.2009

Decided on : 5.12.2011

Shri Naveen Kumar S/o Shri Rattan Chand, R/o Village Sohar, P.O. Sandhole, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners :

Sh. Suresh Kumar Sharma, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Shri Naveen Kumar S/o Shri Rattan Chand by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar by the respondent on 27.1.1999 in Dharampur Division of HPPWD. He continued to work as such till 7.7.2005 and his services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the “specified authority” as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon’ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers were thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that he has completed 240 days during the preceding 12 calendar months prior to his termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by his act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner have been dispensed with as per the provisions of the

Act after the specified authoritycum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so to what effect?
..OPR.
4. Whether the reference is not maintainable, as alleged. If so, to what effect?
..OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of backwages, litigation expenses and compensation with continuity of service from the date of termination.

Issue 2 : Yes

Issue 3 : No

Issue 4 : No

Relief : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS**ISSUES NO. 1 AND 2**

13. Both the issues are being taken up together for discussion as they are co-related and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) *"industrial establishment"* means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment' within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, in its material part reads:

"25N. Conditions precedent to retrenchment of workmen.

- (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
 - (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
 - (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an "industrial establishment" within the meaning of Section 25L (a) of the Act, the petitioner's retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But is hasto be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It

should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

20. Now advertent to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic canons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

21. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter *VA* of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

23. The petitioner in paragraph 7 of his statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim of his having not been specifically disputed in the respondent’s reply, deserves acceptance.

24. Not only this the perusal of the record shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. He came to be employed on 27.1.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter- alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while his services have been dispensed with.

26. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

27. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the

employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The records show that the respondents have employed daily waged beldars even in the year 2006. One Jagdev S/o Shri Ranjeet Singh had been appointed on 1.2.2006.

28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in his favour and against the respondent.

29. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

30. The infraction of the provisions of Section 25-H is in itself fatal to the respondents as it is well settled proposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-H is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

31. The petitioner in paragraph 4 of his affidavit Ex. PW1/A inter alia averred "*that after his illegal retrenchment he tried his level best to secure job but he did not get the same till today and he has no source of income even to have two square meals per day for his and his family members....*" There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in his favour and against the respondent.

ISSUE 3

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.1767, dated 2.5.2008. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi, dated May 27, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.’s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

34. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

35. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of his unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of December, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 430/2009

Date of Institution : 28.8.2009

Date of decision : 25.11.2011

Shri Negi Ram S/o Shri Bahadur Singh, R/o Village & P.O. Kumar, Tehsil Pangi, District
Chamba, H.P.

...Petitioner

Versus

The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Gaurav Sharma, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Negi Ram S/o Shri Bahadur Singh by Executive Engineer, I&PH Division Killar, District Chamba, H.P. w.e.f. year, 2000 and retaining the junior workmen, as alleged by worker, is proper and justified ? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that he was appointed as a beldar by the respondent in the year 1994 in HPPWD Division Pangi at Killar. Thereafter he worked continuously and uninterruptedly till the year 2000, when his services were terminated orally, without any notice, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas his services were disengaged.

4. The petitioner thus contends that his termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of his termination.

5. The petitioner thus seeks his re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections vis-à-vis maintainability and the petitioner was engaged in June, 1992 and worked as such till the year 2000. The petitioner had not completed the criteria of minimum 160 days in each calendar year.

7. On merits it is the case of the respondent that the petitioner had been continued till the year 2000 and thereafter the petitioner had abandoned his job and thereby also lost his seniority in

this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 27.8.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. year 2000 is violative in the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what relief the petitioner is entitled to?
..OPP
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto
.. OPR
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, its effect thereto.
..OPR
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes
 Issue No.2 : No
 Issue No.3 : No
 Relief. : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in October, 2000. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as his own witness has deposed that certain juniors to him were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if

the petitioner had not completed the requisite number of days, he was entitled to the protection of provisions of Section 25-G of the Act and the respondents was duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as *State of H.P. vs. Prem Lal* 2010 (3) Him. LR 1363 and *State of H.P. & Ors. vs. Chet Ram* (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

ISSUE NO. 2

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. No doubt the petitioner was terminated in the year, 2000 and the failure report was submitted by the conciliation officer on 20.6.2008. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in *Naginder Kumar vs. HPSEB* (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In *Divisional Manager, HPFC & another Vs. Garibu Ram*, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come

in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years....."

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 59/2008

Date of Institution : 22.2.2008

Date of decision :30.11.2011

Shri Om Parkash S/o Shri Brij Lal, R/o Village and P.O. Gopalpur, Tehsil Palampur, District Kangra, H.P.

....Petitioner

Versus

The Conservator of Forests, Working Plan & Settlement, Shimla-2, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Shri N.L. Kaundal, AR
Shri Vijay Kaundal, Adv.

For the Respondents :

Shri Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of services of Sh. Om Parkash S/o Shri Brij Lal workman by the Conservator of Forests, Forest Working Plan & Settlement, Shimla-2 w.e.f. 22.12.2000,

even after getting reinstatement through the Hon'ble Administrative Tribunal, H.P. and without complying with the provisions of the Industrial Disputes Act, 1947, is proper and justified? If not, what relief of service benefits the above aggrieved workman is entitled to?"

2. In pursuance to the reference it is averred by the petitioner that he was engaged by the respondent as a daily waged worker in February, 1997 and he worked under the control of DFO, Working Plan Division Dharamshala upto 21.2.1997. Thereupon his services were disengaged. The petitioner was constrained to file an O.A. No. (D) 325/99 before the Hon'ble Administrative Tribunal and on the basis of an order dated 24.3.2000 the petitioner came to be re-engaged by the respondent. The petitioner was again disengaged by the respondents in the month of June/July, 2000. Again O.A. No. (D) 495/2000 came to be filed by the petitioner and by virtue of an order passed by the said Tribunal the petitioner was again re-engaged on 9.11.2000. He thereafter worked till 22.12.2000 when his services were again dispensed with. The petitioner again filed an original application bearing O. A. No. (D) 554/2001. The disengagement of the petitioner (16.11.1999, June/July, 2000 and 22.12.2000) is stated to be illegal, unjust and arbitrary as no notice or charge-sheet had been served upon the petitioner and nor any retrenchment compensation had been paid to him as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. It is further stated by the petitioner that he had completed 240 days continuous service and as such the infraction of the provisions of Section 25-F renders his disengagement null and void.

4. It is further the case of the petitioner that one similar person Shri Kashmir Singh who had been working with the petitioner in the same Division at Dharamshala had also been terminated by the respondent. He too, had filed an O.A. No. (D) 106/2001 and had come to be reinstated by the respondent. He is still working with them. It is also averred by the petitioner that the respondents have retained persons junior to him in service and have also engaged fresh hands after his termination and as such the action of the respondent is also violative of the provisions of Section 25-G and 25-H of the Act.

5. Further, per the petitioner his original application No. 554/2001 had been dismissed on 13.10.2004 on the grounds of jurisdiction, with liberty to the petitioner to approach the competent forum and hence the present reference.

6. The petitioner thus prays for his re-engagement with all consequential benefits.

7. While contesting the claim the respondents have inter alia raised preliminary objections vis-à-vis maintainability and suppression of material facts.

8. On merits it is the case of the respondents that the services of the petitioner were disengaged on 22.12.2000 by giving one month's notice as contemplated under Section 25-F of the Act along with the retrenchment compensation, but the petitioner had refused to accept the same. The respondents have annexed along with copy of the notice and the refusal thereto. Further, per the respondents, the petitioner had not completed 240 days in the preceding 12 months of his disengagement.

9. In respect of Kashmir Singh it is averred by the respondent that he was engaged on 27.12.1996 and had completed 240 days continuously for 10 years starting from 1997 to 2006. He was regularized in the year 2006 subject to the policy of the State.

10. It is further averred by the respondents that the services of the petitioner were disengaged on 22.12.2000 when the working plan division was wound up, after following the

proper procedure, as per the Act. It is further submitted by the respondent that the work pertaining to a Working Plan Division are temporary and are in progress only till the preparation of the working plan. The preparation of Dharamshala Working Plan was completed during May, 2001, which necessitated the disengagement of the petitioner.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I notice that on 21.7.2008 the following issues had been framed by my Ld. Predecessor:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits the petitioner is entitled to?

. .OPR

2. Whether the claim petition is not maintainable.

. .OPR

3. Whether the petitioner is guilty of suppressio veri.

. .OPR

4. Relief.

13. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Partly yes

Issue No. 2 : No

Issue No. 3 : No

Relief : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

14. The simple case set up by the petitioner is that his disengagement w.e.f. 22.12.2000 was illegal and unlawful as no notice had been served to the petitioner, as contemplated under Section 25-F of the Act and neither any charge sheet had been served on him and nor any inquiry conducted against him before disengaging him. It is also sought to be portrayed that persons junior to the petitioner had been retained and even fresh hands have been engaged after his disengagement and as such the action of the respondent is violative of the provisions of Section 25-G and 25-H of the Act.

15. Per contra, the respondents are stated to have issued retrenchment notice under Section 25-F of the Act on 27.5.2000 doing away with the services of the petitioner w.e.f. 28.6.2000. Over and apart it is the specific contention of the respondents that the services of the petitioner wasterminated on 22.12.2000 when the working plan division had been wound up and proper procedure under the Act had been resorted to while disengaging the services of the petitioner. The respondents have further averred that though the petitioner had not completed 240 days in the preceding 12 months of his disengagement, yet a notice was issued to him. The work pertaining to the work plan divisions are stated to be temporary in nature and remained in existence only till the preparation of the working plans of the concerned division.

16. The retrenchment notice Ex. RW1/B issued on 27.5.2000 reflects that since the working plan has been submitted the division was being closed and as such the services of the

petitioner would no longer be required. The Chief Conservator of Forest Working Plan and Settlement, Mandi who has appeared as RW1 has also deposed on the same lines. The said was issued on 27.5.2000, whereas the disengagement pertains to December, 2000. Ex. RW-1/B thus cannot be said to be the notice dispensing the services of the petitioner. Even otherwise, as per the notice no retrenchment compensation had been paid to the petitioner.

17. The fact does emerges from the evidence on record is that the disengagement of the petitioner was necessitated because of the wounding up of the working plan division. More particularly, as the working plan had been submitted by the respondent. The respondent thus was very much within its right to have exercise the option contemplated by Section 25-F of the Act but the respondents had failed to issue retrenchment notice to the petitioner, as has been held hereinabove, supra.

18. The Ld. Authorized Representative of the petitioner has further strenuously argued that the respondents had retained persons junior to him and also engaged fresh hands after the disengagement of the petitioner and as such the action of the respondent is violative of the provisions of Section 25-G and 25-H of the Act. In this behalf much stress has been laid on Ex. D1 which is a seniority list of workmen prepared by the respondent. The Chief Conservator of Forest Shri Chandresh Sharma while appearing as RW1 has admitted that Ex. D1 has been prepared by the department. The witness has further admitted that Sunder Singh reflected at serial No.1 was working with the respondent on 22.12.2000 and even one Tek Singh reflected at serial no.3 was engaged on 18.11.2002 and the said workmen is still working with the respondent. He has also admitted that when Tek Singh was engaged no notice was issued to the petitioner for re-engagement. The witness has further tried to portray that the workmen reflected in Ex. D1 were posted in Kangra Division. However, the witness has deposed that Ex. D1 is a seniority list pertaining to the Dharamshala Working Plan Division. He has also admitted that Kashmir Singh was initially engaged at Dharamshala and is presently working at Shimla. The mandays of Kashmir Singh has also been placed on record vide Ex. RW1/F.

19. As per the evidence on record Kashmir Singh was engaged in 1996 and he has continuously worked (with 240 days in each calendar year till the year 2006).

20. No doubt, since the working plan had been submitted the respondents were within their right to have retrenched the services of the petitioner, but the same was liable to be done strictly on the principle of 'last come first go', as envisaged under Section 25-G of the Act. The Chief Conservator of Forest, while appearing as RW1 has admitted that Ex. D1 pertains to the entire Dharamshala working plan division. If that was so, it clearly emerges from the seniority list that Sunder Singh was junior to the petitioner as he was engaged for the first time on 18.11.1998 while one Tek Singh had been engaged for the first time on 18.11.2002. If that was so the action of the respondents in disengaging the services of the petitioner was not strictly in compliance with the principle of 'last come first go' and nor the provisions of Section 25-H had been followed while engaging fresh hands. Both the provisions are mandatory in nature. The non compliance of mandatory provisions of the Act is thus fatal to the respondent. Not only this by now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can ably be drawn by the judgments of the Hon'ble Supreme Court in Central Bank of India vs. S. Satayam, 1996 (5) SCC 419 and Harjinder Singh vs. Punjab State Ware House Corporation, 2010 (3) SCC 192 and our own Hon'ble High Court in State of H.P. vs. Prem Lal 2010 (3) Him LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No. 3887/2011 decided on 3.6.2011). To this limited extent the disengagement of the petitioner is illegal. So is the non-issuance of notice under Section 25-F fatal to the case of the respondent.

21. The respondent while disengaging the petitioner has not followed the principle of 'last come first go'. Even if the working plan had been submitted the petitioner based on his seniority

should have been offered employment in some other part of the working plan division. This gains significance because even as per RW1 the seniority list of workmen is maintained at divisional level. The respondents were duty bound to have maintained the divisional level seniority list and thereupon resorted to retrenchment strictly on the basis of the seniority. A bare glance at Ex. D1 shows that such procedure was not followed by the respondent. To this limited extent the disengagement of the petitioner is bad, being violative of the provisions of the Section 25-G and 25-H of the Act. Consequently the action of the respondents is set aside. The petitioner is directed to re-engage forthwith. Seeing to the peculiar circumstances of the fact discussed hereinabove the petitioner shall not be entitled to any back wages, more particularly since the working plan vis-à-vis Dharamshala had already been submitted and thereupon the petitioner otherwise had to be stationed at some other place in the division. The issue is accordingly decided partly in favour of the petitioner and against the respondent.

ISSUE NO. 2

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the relief the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE NO. 3

23. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

RELIEF

24. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall not be entitled to back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today the 30th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 375/2009

Date of Institution : 18.7.2009

Date of decision : 7.01.2012

Shri Om Parkash S/o Shri Hari Ram, R/o Village Jimjima, P.O. Dull, Tehsil Joginder Nagar, Distt. Mandi, H.P.

...Petitioner

Versus

The Sr. Executive Engineer, HPSEB Electrical Division Joginder Nagar, Distt. Mandi, H.P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Abhisekh Lakhanpal, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Om Parkash S/o Shri Hari Ram, R/o Village Jimjima, Post Office Dull, Tehsil Joginder Nagar, Distt. Mandi, H.P. by the Sr. Executive Engineer, HPSEB Electrical Division Joginder Nagar, Distt. Mandi, (H.P.) w.e.f. 21.10.2004, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The short and simple case set up by the petitioner in the statement of claim is that he was engaged as a beldar on daily wages by the respondent in 1990. He thereafter worked as such uninterruptedly till 20.10.2004. Thereafter the services of the petitioner was disengaged without any notice, charge sheet or inquiry nor he was paid one month's salary in lieu of the notice. The petitioner was not granted any retrenchment compensation.

3. It is further averred by the petitioner that while dispensing his services the principle of 'last come first go' was not followed by the respondent and persons junior to him were retained namely Sanjeev Kumar (6.1.1998), Janak Raj (4.7.1998), Raj Kumar (16.10.1998) and Sansar Chand (25.11.1998).

4. It is further the case of the petitioner that after his disengagement the respondent had engaged fresh hands too.

5. The petitioner thus contends that the action of the respondent is violative of the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and as such his disengagement is void and illegal.

6. Per the petitioner he had also approached the Hon'ble Administrative Tribunal in the year 2005 by filing an original application which had been dismissed for want of jurisdiction with liberty to approach the competent forum and thereupon the petitioner had raised the demand on 26.3.2007 and hence the present reference.

7. The petitioner thus prays that he be ordered to be re-engaged with all consequential benefits.

8. The respondents while contesting the claim have raised preliminary objections that the reference is misconceived, the petitioner has no locus standi and that the reference was not maintainable as the lis had already been decided by this Court vide an order dated 13.6.2006.

9. On merits it is the contention of the respondent that the petitioner was engaged in the year 1996 and he served upto 14.8.2001 with certain interruptions and breaks. Thereafter the petitioner joined in the year 2003 and worked till 2004 though intermittently. The mandays of the petitioner have been placed on record. After 20.10.2004 the petitioner is stated to have never turned up for work. Even otherwise he is stated to be irregular in work and appointed for specific purpose and work only. The rest of the contents of the statement of claim were denied by the respondent. The respondent thus prays for the dismissal of the claim.

10. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

11. On 11.1.2011 the following issues had come to be framed by this Court:

1. Whether the termination of the petitioner w.e.f. 21.10.2004 is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to?
2. Whether the reference is not maintainable, as alleged, the petitioner has already approached this Court on the same cause earlier, as alleged. If so, to what relief.
3. Relief.

..OPP

12. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No.2 : No

Relief. : Allowed partly as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 2

13. The respondents have raised a specific objection that the present reference is not maintainable as this Court has already decided the lis against the petitioner vide an award passed by this Court on 13.6.2006. In fact the said award has not been placed on record by the respondent. No doubt the Additional Superintending Engineer Sh. Parvesh Thakur while appearing as RW1 has deposed that the matter has already been decided by this Court vide an award dated 13.6.2006 (Reference No.73/2003) but the reference in question pertains to the disengagement of the petitioner w.e.f. 21.10.2004. Not only this the RW1 has himself further deposed that the petitioner had again served the respondent Board w.e.f. 21.10.2003 to 20.10.2004. It is thus manifestly clear from the evidence on record that the earlier award was not relating to the same cause of action. It apparently pertained to the disengagement of the petitioner prior to the year 2003. In one of the connected matters namely Ravi Kumar vs. Addl. Supdt. Engineer HPSEB an award has been placed on record but the same pertained to the 319 disengagement of the petitioner (Ravi Kumar) on 15.8.2001. The mandays on record Ex. RW1/B also shows that the petitioner has worked continuously with the respondents w.e.f. 21.10.2003 to 20.10.2004. The earlier reference thus was not on the same cause, but apparently vis-à-vis the disengagement of the petitioner prior to the year 2003. It thus cannot be said that the present reference is not maintainable. The issue is thus decided against the respondent.

ISSUE NO. 1

14. Now adverting to the factual matrix of the case, it is more than clear from the mandays of the petitioner Ex. RW1/B that the petitioner had put in 305 days in the preceding 12 months of his disengagement. Though the respondents have pleaded that the petitioner was engaged for specific work but the mandays of the petitioner placed on record belie the case set up by the respondent. Even otherwise no evidence has been led to show that the petitioner was engaged against specific work. The respondents have also placed on record a purported notice of retrenchment issued to the petitioner and 9 other workmen vide Ex. RW1/D. The said notice was issued under Rule 14(2) of the Certified Standing Orders giving 10 days notice to the petitioner on the premises that the work against which the petitioner was engaged has come to an end. The said retrenchment notice under Rule 14(2) of the Certified Standing Orders was issued on 15.10.2004. The said notice cannot be countenanced in any manner more particularly because the respondent Board itself has specifically pleaded in umpteen number of cases that the Board has been exempted from the operation of the Standing Orders w.e.f. 11.9.1985. Though this has not been pleaded in the present case but judicial notice can be taken of the fact, as this defence is propounded by the Board in almost all cases coming up before this Court. Even otherwise the said notice cannot be taken into consideration as the petitioner had admittedly completed more than 240 days in the preceding 12 months of his disengagement and he was thus entitled to the protection of the provisions of Section 25-F of the Industrial Disputes Act. The disengagement of the petitioner thus is violative of the provisions of Section 25-F.

15. Not only this the seniority list of workmen placed on record (Mark A) further shows that there are number of people who were junior to the petitioner. That being so even the purported notice issued to the petitioner (Ex. RW1/D) was against the principle of 'last come first go' and as such against the statutory provisions of Section 25-G. Even if notice is assumed to be legally sustainable though it has been held not to be, the disengagement of the petitioner was violative of the provisions of Section 25-G of the Act.

16. The Ld. counsel for the respondent Board has also placed reliance upon the judgment of Hon'ble Supreme Court titled as Bharat Sanchar Nigam Ltd. vs. Man Singh (2011 STPL (Web) 966) to contend that even if the order of retrenchment is passed in violation of Section 25-F, rather than reinstating the petitioner he should be granted compensation to meet the ends of justice. No doubt the judgment of the Hon'ble Supreme Court does talk in the aforesaid terms but in the present case over and apart from the violation of Section 25-F the respondent Board has retained innumerable workmen who had come to be engaged after the petitioner and were junior to the petitioner. The retention of persons junior to the petitioner thus gives him a right to claim parity with those who had subsequently joined the respondent Board. In fact, in place of the petitioner it was the juniors who were to give way, at the time of retrenchment. The provisions of Section 25-G are statutory and binding in nature. The ratio of the aforesaid judgment of the Hon'ble Supreme Court is thus not applicable to the fact and circumstances of the present case.

17. The action of the respondent thus is palpably illegal and against the mandate of Section 25-F and 25-G of the Act. Consequently the respondent is directed to re-engage the petitioner. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement. However due to the peculiar circumstances discussed above the petitioner is not entitled to any back wages. The issue is decided accordingly.

RELIEF

18. For all the aforesaid reasons discussed above the reference is allowed partly. The respondent is directed to re-engage the petitioner forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal termination, though except back wages. The

reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 7th day of January, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 179/2010

Date of Institution : 20.5.2010

Date of decision : 30.12.2011

Shri Parkash Chand S/o Shri Sanju Ram, R/o Village Kun, P.O. Balag, Tehsil Sunder Nagar, Distt. Mandi, H.P.

....Petitioner

Versus

1. The Executive Engineer, I&PH Division Karsog, Distt. Mandi, H.P.
2. The Executive Engineer, I&PH Division Sunder Nagar, Distt. Mandi, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. N.L. Kaundal, AR.

Sh. Vijay Kaundal, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the termination from daily wages service of Sh. Parkash Chand S/o Sh. Sanju Ram workman w.e.f. 1.11.2000 by the i). The Executive Engineer, IPH Division Karsog, Distt. Mandi, H.P. ii) The Executive Engineer, IPH Division Sunder Nagar, Distt. Mandi, H.P. without serving any show-cause notice and without holding and enquiry to so called abandonment is legal and justified? If not, what seniority, back wages, service benefits and relief Sh. Parkash Chand S/o Sh. Sanju Ram workman is entitled to?”

2. The case set up by the petitioner is that he had come to be appointed as a daily waged fitter Grade-II by the respondent no.1 on July, 1998. He continued to work as such till 31.10.2000 and in between the respondent had given fictional breaks to the petitioner. His services came to be verbally dispensed with on 1.11.2000 and that too without any prior notice, charge sheet or compensation.

3. It is further the case of the petitioner that the respondents have retained person junior to him like one Gulab Singh and as such violated the principle of ‘last come first go’ as envisaged

under section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The respondents have also resorted to fresh recruitment and as such even violated the provisions of Section 25-H of the Act.

4. The petitioner had initially approached the Hon'ble Administrative Tribunal in respect of his illegal termination vide O.A. No.1080/2001 but the same was dismissed for want of jurisdiction, with liberty to the petitioner to approach the competent forum and thereupon he had raised the industrial dispute on 26.4.2006.

5. The petitioner thus prays that his termination be set aside and quashed. He be reinstated in service along with back wages and all consequential benefits.

6. While contesting the claim the respondent inter alia raised the preliminary objections vis-à-vis maintainability, non-joinder of parties, limitation and the termination of the petitioner being not within the definition of "retrenchment", as the petitioner had reportedly abandoned work of his own. The administrative control of G.P. Bandli and Balag along with scheme had been transferred to the I&PH Division Sunder Nagar and the petitioner did not join for work in the I&PH Division Sunder Nagar and thereupon abandoned job.

7. On merits it is the case of the respondents that the petitioner did work with them till 31.10.2000, but it was intermittent in nature. The respondents never gave any fictional breaks to the petitioner. His services were never terminated, rather he left the job of his own sweet will.

8. It is further the case of the respondent that the administrative control of G.P. Bandli and Balag was transferred from I&PH Division Karsog to I&PH Division Sunder Nagar. In the present case no transfer had been made, but the petitioner was also shifted to I&PH Sub Division, Sunder Nagar, because the scheme on which he was working had also been transferred to I&PH Division Sunder Nagar. Theoretically and practically the petitioner was to work on the same scheme, but the petitioner had not reported for duty on the said scheme. It is thus prayed by the respondent that the petitioner is not entitled for any relief.

9. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

10. On 17.2.2009 the following issues came to be framed by this Court:

1. Whether the termination of the petitioner w.e.f. 1.11.2000 is violative of the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act, 1947, as alleged. If so, to what relief the petitioner is entitled to?
..OPP
2. Whether the petition is not maintainable, as alleged. If so, to what effect?
..OPR
3. Whether the reference is barred by the vice of delay and laches. If so, to what effect?
..OPR
4. Relief.

11. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS**ISSUE No. 1**

12. The petitioner's claim simplicitor is that his services were terminated on 1.11.2000 verbally and without any notice. On the contrary it is the stand of the respondent that the administrative control of G.P. Bandli and Balag had been transferred to I&PH Division, Sunder Nagar and the petitioner had been directed to report for duty in I&PH Division Sunder Nagar along with the scheme. He failed to do so and as such abandoned job of his own.

13. The case of the respondent thus is of abandonment while the petitioner claimed that his services were terminated illegally. The petitioner in furtherance of his case has appeared as his own witness. The respondents have further placed on record an office order dated 20.9.2000 whereby the administrative control of G.P. Bandli and Balag Division (Ex. RW1/C) has been transferred to I&PH Sub Division Sunder Nagar, his mandays Ex. RW1/B and the details of the workmen who were alleged to be transferred from I&PH Division Karsog to I&PH Division Sunder Nagar. The respondents on the other hand have examined the Executive Engineer Sh. M.S. Thakur as RW1. He has reiterated the stand taken by the respondents that the administrative control of G.P. Bandli and Balag was transferred to I&PH Division Sunder Nagar on 20.9.2000 but the petitioner did not report for duty on the scheme. Chaman Lal and one Brij Lal are still working in I&PH Sub Division Nihri whereas the petitioner left job at his own sweet will. Such abandonment would not fall within the definition of the "retrenchment".

14. The respondents have not produced anything on record to show that the services of the petitioner had been transferred to I&PH Division Sunder Nagar along with some scheme. No documentary evidence has been placed on record in this behalf. There is no iota of evidence to remotely show that the petitioner had been informed of the change of his service conditions or that he was to report for duty at I&PH Division Sunder Nagar. The respondent has placed on record Ex. RW1/C, which is an office order showing that the administrative control of the work falling in G.P. Bandli and Balag was transferred to I&PH Sub Division Sunder Nagar. It also does not show that some scheme was transferred to I&PH Division Sunder Nagar. In fact some part of the area earlier following in I&PH Sub Division Nihri was transferred to I&PH Sub Division Sunder Nagar. It is not that a scheme had been transferred from one Sub Division to other. The plea of the respondents that the petitioner was engaged for a specific scheme, which itself was transferred to I&PH Sub Division Sunder Nagar is thus fallacious and not worthy of credence. Even for the sake of arguments if it is believed that the scheme was transferred as is the case of the respondent but there is no evidence on record remotely suggesting that the services of the petitioner were also transferred to the I&PH Sub Division Sunder Nagar or he was ever asked to report for duty in the new Sub Division. RW1 Shri M.S. Thakur has also feigned ignorance whether a list of workmen was given to the I&PH Sub Division Sunder Nagar of the erstwhile workers working in Bandli and Balag. Admittedly no explanation was sought from the petitioner regarding his abandonment.

15. Even if it is to be assumed that the petitioner was to go with the scheme, apparently no notice of change as is contemplated under Section 9-A of the Industrial Disputes Act was ever given to the petitioner. The fact of non compliance of the provisions of Section 9-A of the Act would render the change in the condition of service void ab initio. As far as the question of abandonment is concerned, it is now well settled that the plea of abandonment has to be proved as a question of fact. There is no evidence on record to prove so. Moreover, since the said plea is itself contradicted by the respondents themselves that it was a transfer of the scheme to I&PH Sub Division, Sunder Nagar, it cannot be taken at its face value. I am afraid the plea of abandonment is also not sustainable in these circumstances.

16. It is thus to be held that the petitioner was neither engaged in a specific scheme nor any scheme had been transferred to I&PH Sub Division Sunder Nagar. The petitioner too was never shifted along with the scheme and thereupon had not even abandoned job. The services of the

petitioner came to be terminated by the respondent in the most illegal manner, being in derogation to the mandatory provisions of the Industrial Disputes Act. His termination was not only in violation of the provisions of Section 25-F but also was a result of an unfair labour practice. It was also in violation of the provisions of Section 9-A of the Act. The termination of the petitioner was thus arbitrary and illegal.

17. Consequently for all the aforesaid reasons, the termination of the petitioner is set aside and quashed. He is ordered to be reinstated forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal termination. In the peculiar facts and circumstances of the case the petitioner is not held entitled to any backwages.

ISSUE NO. 2

18. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE No. 3

20. The provisions of the limitation Act do not strictly apply to the dispute arising under the Act. Nonetheless the claim may be categorized to be a stale claim, if the right of workmen has become stale or died its own death. In the case in hand, immediately after his termination the petitioner had approached to the Hon'ble Administrative Tribunal vide O.A. No.1080/2001 for the redressal of his grievances. The said original application came to be dismissed on the point of jurisdiction with liberty to approach the appropriate authority under the provisions of the Act. At the best it was a choice of the wrong forum. Thereafter the petitioner took recourse to the provisions of the Act. It cannot be said that the claim preferred by the petitioner was stale.

21. Even if the provision of the limitation Act had been applicable the petitioner would have got allowance for having approached a wrong forum. Thus it cannot be said that the petitioner would have lost the right and the remedy because of the wrong choice of forum. Issue is accordingly decided against the respondent.

RELIEF

22. For all the aforesaid reasons discussed above the termination of the petitioner is set aside and quashed. He is ordered to be reinstated forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of December, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 9/2008

Date of Institution : 17.1.2008

Date of decision : 07.01.2012

Shri Prem Lal S/o Shri Sant Ram, C/o Shri Sunder Singh Sippy, General Secretary,
HPPWD & IPH Workers Union, 100/3, Rouara Sector No.2, Bilaspur, District Bilaspur, H.P.

...Petitioner

Versus

Executive Engineer, HPPWD Division No.1, Bilaspur, District Bilaspur, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. S.S. Sippy, AR

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the demand raised by Shri Prem Lal S/o Shri Sant Ram workman through General Secretary, HPPWD & IPH Workers Union, 100/3 Rouara Sector No.2, Bilaspur, District Bilaspur, H.P. vide demand notice dated 18.5.2005 (copy enclosed) before the Executive Engineer, HPPWD Division No.1, Bilaspur, District Bilaspur, H.P. not to promote him on the post of cook is proper and justified? If yes, what relief of service benefits the above aggrieved workman is entitled to? If not, what its legal effects?”

2. In pursuance to the reference it is averred by the petitioner that he was engaged as a beldar by the respondent on 1.12.1980. He was brought on work charge w.e.f. 1.1.1994 and since then he is working in the Rest House as a Cook.

3. The respondent has been taking work of a cook from the petitioner whereas he is being paid the remuneration of a beldar. The petitioner has time and again requested the respondent to post him as a cook, but to no avail. It is further the contention of the petitioner that the respondents have engaged one of his juniors namely Roshan Lal who was also a beldar and posted him as a temporary cook w.e.f. 25.5.2005. The action of the respondent is stated to be in violation of the rules framed in this behalf and also an unfair labour practice. Further per the petitioner he is working as a cook continuously for the last 27 years and has remained posted under various engineers including S/Shri Manmohan Singh, R.K. Bhardwaj, P.C. Gautam, Baldev Thakur, Sada Ram Bhardwaj, Manohar Lal and Gian Chand etc. Per the petitioner he is entitled to the pay of a cook. The petitioner thus claim that he may be ordered to be posted as a cook.

4. While contesting the claim the respondents have inter alia raised the preliminary objection vis-à-vis limitation, concealment of material facts, maintainability and this Court having no jurisdiction to try and entertain the matter.

5. On merits it is admitted by the respondent that the petitioner was initially engaged in the year 1980 and w.e.f. 1994 he was brought on work charge as a beldar and that the petitioner has

been continuously working at Dhaulra Rest House as a helper. It is denied that the petitioner is working as a cook in the Rest House. The petitioner is stated to be working as a beldar/helper and is being paid accordingly.

6. It is admitted that Roshan Lal has been engaged as a temporary cook. Per the respondent because of his experience he has been ordered and posted as a temporary cook by virtue of the orders passed by the Chief Engineer, Central Zone.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. I notice that on 27.3.2009 the following issues had come to be framed by my Ld. Predecessor:

1. Whether the respondent's act of not posting the petitioner as Cook is proper and justified. . .OPP
2. Whether the petition is not maintainable. . .OPR
3. Whether this Court has not jurisdiction to entertain the petitioner's claim.
4. Whether the petitioner's claim suffers from the vice of delay and laches.
5. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Partly no
 Issue No.2 : No
 Issue No.3 : No
 Issue No.4 : No
 Relief. : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1

10. The perusal of the evidence shows that the petitioner has been working as a daily waged beldar with the respondent since the year 1980. He was brought on work charge w.e.f. year 1994. Even as per the respondent rightly from the inception the petitioner is working as helper in the Rest House at Dhaulra.

11. The petitioner claims that he used to work as a cook whereas as per the respondent he was working as a beldar/helper. The petitioner thus claims that he be ordered to be posted as a cook and pay him the wages of a cook.

12. Apparently the dispute came to the fore that one Roshan Lal was ordered to be posted as temporary cook in the Circuit House at Bilaspur vide order dated 2.5.2005. The said Roshan Lal was in fact also a beldar. He was brought on work charge w.e.f. the year 1995. Both the petitioner and the said Roshan Lal were initially engaged beldars and apparently continued working in the same and similar capacity but in the Rest House/Circuit House respectively. Roshan Lal came to be

posted as a temporary cook vide an order dated 2.5.2005 and it was done on the recommendations of the Chief Engineer, Central Zone Mandi. The said letter was issued vide Ex. RW1/B.

13. During the course of arguments the respondents were directed to place on record the R&P rules of both a cook and a beldar. The Khalasi, Helper and Beldars have been clubbed as a single post and the scale of pay of a beldar and a cook is the same, being 770-30-950-35-1160-1365 (prerevised). It is thus clear that the pay scale of both the beldar and cook are the same. There is no discrepancy in the same.

14. The R&P Rules for a cook inter alia postulate that in case of recruitment by appointment/promotion/deputation/transfer of Grade a person can be appointed from amongst daily waged cook who have completed 10 years of continuous service with minimum of 240 days in a calendar year. The mode of the recruitment is hundred percent by the appointment failing which by direct recruitment. Roshan Lal had been appointed on the basis of his work and experience on the recommendation of the Chief Engineer, Central Zone. Apparently the petitioner has also been working with the respondent at Dhaulra Rest House for more than two decades. Even if as a Helper he might have gained tremendous experience while working for last 27 years. The pay scale of both the categories i.e. WC Beldar and the cook is the same. The only difference being the change of nomenclature of the post. Since a person junior to the petitioner has already been ordered to be posted as temporary cook and seeing to the experience of the petitioner who also has been doing almost the same work as Roshan Lal. The petitioner has almost put in 27 years in the same place and post it would be in fitness of things that even the respondent is posted as cook in the Rest House Dhaulra, where the petitioner is alleged to be working even today. In any case it will not entail any pecuniary loss of the respondent as the pay scale of both the WC Beldar and the cook is the same. Since the petitioner has already been rendering service in the Rest House, Dhaulra, even assuming that he was doing so as a helper the experience of 27 years thus entitled him to be appointed as a cook even as per the Recruitment and Promotion Rules for the said post. It is thus held that the action of the respondent in not posting the petitioner as a cook is improper and unjustified, more so keeping in view the engagement of Roshan Lal. Consequently the respondent is directed to post the petitioner as a cook. The order shall be prospective in nature. Needless to reiterate that the pay scale of both the WC Beldar and cook are the same. The issue is decidedly in the aforesaid terms.

ISSUE NO. 2

15. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE NO. 3

16. Nothing has been urged and brought to my notice how this Court has no jurisdiction to try and entertain the petitioner's claim. The issue is decided against the respondent.

ISSUE NO. 4

17. Admittedly the petitioner had raised the demand in the year, 2005 and the failure report was submitted by the conciliation officer on 15.11.2006. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. It cannot be said by any stretch of imagination that the claim was stale or that the petitioner was sleeping over his rights in any manner. There is no evidence as to how the claim was time barred and not maintainable. Therefore

it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act.

RELIEF

18. For all the aforesaid reasons discussed above the reference is allowed partly. Consequently the respondent is directed to post the petitioner as a Cook forthwith. The order shall be prospective in nature and shall only entail the change of nomenclature of the post. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 7th day of January, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 429/2009

Date of Institution : 28.8.2009

Date of decision : 25.11.2011

Shri Prem Lal S/o Shri Gauri Dass, R/o village Parmar, P.O. Kumar, Tehsil Pangi, District Chamba, H.P.

...Petitioner

Versus

The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Gaurav Sharma, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Prem Lal S/o Shri Gauri Dass by The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P. w.e.f. Year, 2005 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that he was appointed as a beldar by the respondent in the year 1995 in I&PH Division Pangi at Killar. Thereafter he worked continuously and uninterruptedly till the year 2005, when his services were terminated orally, without any notice, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas his services were disengaged.

4. The petitioner thus contends that his termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of his termination.

5. The petitioner thus seeks his re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections that the petitioner was engaged in June, 1995 and worked as such till the year 2004. The petitioner had not completed the criteria of minimum 160 days in each calendar year.

7. On merits it is the case of the respondent that the petitioner had abandoned his job and thereby also lost his seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 27.8.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. year 2005 is violative in the provisions of Section 25-F and 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what relief the petitioner is entitled to?
..OPP
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto
.. OPR
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, its effect thereto.
..OPR
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes
Issue No.2 : No
Issue No.3 : No
Relief : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had

himself abandoned job in September, 2004. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as his own witness has deposed that certain juniors to him were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, he was entitled to the protection of provisions of Section 25-G of the Act and the respondents was duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as State of H.P. vs. Prem Lal 2010 (3) Him. LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

ISSUE NO. 2

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. No doubt the petitioner was terminated in the year, 2005 and the failure report was submitted by the conciliation officer on 20.6.2008. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice

was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 60/2010

Date of Institution : 23.4.2010

Date of decision : 21.01.2012

Shri Prem Singh S/o Shri Chatro Ram, R/o Village Luthnu, P.O. Bathri, Tehsil Dalhousie,
Distt. Chamba, H.P.

...Petitioner

Versus

The Executive Officer, Municipal Council, Dalhousie, Distt. Chamba, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. M.G. Sharma, Adv.
For the Respondent : Sh. Rahul Sharma, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Prem Singh S/o Shri Chatro Ram, daily wage workman by The Executive Officer, Municipal Council, Dalhousie, Distt. Chamba, H.P. w.e.f. 13.6.2002 vide notice dated 14.5.2002 on the plea of non-availability of work and funds, whereas worker claims that plenty of work is available, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the above employer?”

2. In furtherance to the reference it is pleaded by the petitioner in the statement of claim that he was engaged as a beldar on daily wages in May, 1999. The petitioner continued working as such till his disengagement on 13.5.2002. The respondent vide a notice dated 14.5.2002 had dispensed with his services w.e.f. 13.6.2002. As per the petitioner even while issuing notice to the petitioner no retrenchment compensation had been paid to him and as such the alleged notice is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is further averred by the petitioner that after his disengagement he had approached the Hon'ble Administrative Tribunal by filing an original application which was disposed of with the directions that the petitioner shall be considered for re-engagement subject to availability of work and funds, vide an order dated 27.6.2003. Since the respondent had raised the ground of jurisdiction before the Hon'ble Administrative Tribunal the petitioner has preferred the present reference.

3. It is also averred by the petitioner that after his disengagement the respondents have indulged in unfair labour practices as the work which was available with the respondent was got executed through contractors, resulting in denial of re-engagement to the petitioner. In spite of availability of work and funds with the respondents the petitioner has requested the respondent to re-engage him but to no avail. The petitioner had completed more than 240 days in the preceding 12 months of his disengagement and as such his disengagement is violative of the provisions of Section 25-F, 25-G and 25-H of the Act.

4. The petitioner thus prays for his re-engagement with all consequential benefits.

5. While contesting the claim the respondent has inter alia raised the preliminary objections vis-à-vis maintainability, cause of action, limitation, non joinder of necessary parties. It is also averred by the respondent that the right of the employer to get the work executed departmentally or through a contractor cannot be a subject matter of reference and the replying respondent shall consider the case for reengagement as and when departmentally work becomes available.

6. On merits it is the case of the respondent that the petitioner was engaged on 12.5.1999 but for performing for casual and intermittent work only. It is further averred by the respondent that the termination of the petitioner on account of completion of casual work and non availability of work which was required to be executed through departmental labour is not retrenchment. The services of the petitioner by way of notice dated 14.5.2002 with the directions to the petitioner to

collect the retrenchment compensation on 17.6.2002 which is fair, just and legal. The petitioner had himself failed to receive the retrenchment compensation.

7. It is also averred by the respondent that the right and discretion of an employer, as to how and in which manner and from whom the developmental works are to be got executed cannot be restricted under any law as to compel an employer to get the developmental works executed through departmental labour only. Thus the claim of re-engagement is without merit and the petitioner is not entitled to any relief. The respondent thus prays for the dismissal of the claim.

8. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

9. On 28.5.2011 the following issues had come to be framed by this Court:

1. Whether the termination of the petitioner w.e.f. 13.6.2002 is violative of the provisions of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . . .OPP
2. Whether the reference is not maintainable, as alleged. If so, what effect? . . .OPR
3. Whether the reference is hit by the vice of delay and laches, as alleged. If so, to what effect? . . .OPR
4. Relief.

10. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
 Issue No.2 : No
 Issue No.3 : No
 Relief. : Allowed partly as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

11. It is not denied that the petitioner had initially come to be engaged on 11.5.1999. It is however the case of the respondent that the petitioner was engaged for casual and intermittent work only. The seniority list of the daily waged staff annexed along with as Mark A also reflects the mandays of the petitioner. As per the mandays on record the petitioner has worked continuously and uninterruptedly right from May, 1999 till his disengagement w.e.f. 13.6.2002. The contention of the respondent that the petitioner was engaged for casual and intermittent work is thus belied by the mandays on record.

12. No doubt a notice was issued to the petitioner vide Ex. RW1/A The respondent did issue one month's notice to the petitioner as per the requirement of Section 25-F but the respondent had been directed to receive his retrenchment compensation if any from the office on 17.6.2002. No retrenchment compensation had been quantified but in generalized terms the petitioner had been asked to collect his retrenchment compensation if any on 17.6.2002.

13. Para Section 25-F of the Act reads thus:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. It is clear from the reading of the Section that the requirement prescribed in Sub Section (a) and (b) is a condition precedent to retrenchment and failure to comply the same would render the impugned retrenchment invalid and inoperative. The provisions of sub section (a) and (b) are to precede the retrenchment and not to follow it. In *National Iron and Steel Company Ltd. vs. State of West Bengal*, (1967)II LLJ 23 (SC). The Hon'ble Supreme Court in a similar situation, whereas a notice dated 15th November, 1958 was issued to the workmen terminating the services of the workmen w.e.f. November 17, and directed him to collect one month's notice in lieu of notice on November 20 or thereafter had held manifestly the provisions of Section 25-F had not been complied with. The same happens to be the situation in the present case. This has obviously been done in the present case too, and therefore, the condition precedent for the retrenchment as envisaged under Section 25-F of the Act has not been fulfilled and this certainly invalidates the order of retrenchment itself. Clause (a) and (b) of Section 25-F are obligatory and create a condition precedent to retrenchment. Therefore, if retrenchment compensation is not paid before the workmen are asked to go, retrenchment order would be bad in law and invalid. Moreover the tender of compensation in order to be valid under Section 25-F should be of the precise amount and should be made simultaneously with the termination of the service. The fact that the employer wrote to the workmen to clear his account in the office will not amount to an offer of retrenchment compensation at the time of terminating his services. In this behalf support can be drawn from the judgment of the Hon'ble Punjab and Haryana High Court titled as *Kailash vs. Labour Court*(1998)III LLJ (Supp) 4 and a judgment of the Hon'ble Bombay High Court titled as *Managing Director, Bombay Film Laboratory Ltd. vs. L.G. Vasule* [(1998)1 LLJ 208 (Bom)].

15. It has thus to be held that the impugned retrenchment is invalid and inoperative in the eyes of law.

16. Though the respondents have categorically averred that it is sole prerogative of the employer to as to how and in which manner and from whom the developmental works are to be got executed but no evidence has been led to remotely show that after the year 2002 all the works were got executed through contractual labour. The mandays and seniority list of the daily waged worker show that all the workmen were working continuously and uninterruptedly. They were neither casual or intermittent workers. Nor was the petitioner. No evidence has to led to remotely show that the respondents have no work and funds after the year 2002.

17. Even assuming the pleaded case of the respondent, that it is the sole prerogative of the respondent to get work executed by a contractor or departmentally is to be appreciated, suffice it to say that respondent has misconstrued the provisions of law, atleast vis-à-vis the protection

envisaged by the Industrial Disputes Act. As per the Vth schedule to abolish the work of a regular nature being done by workman, to give such work to contractors may also amount to an “unfair labour practice”. However, as discussed hereinabove supra the said fact has been pleaded but not been proved by the respondent.

18. For all the foregoing reasons discussed above it is held that the retrenchment of the petitioner is invalid and inoperative in the eyes of law. Consequently the retrenchment of the petitioner is set aside and quashed. As a sequel thereto the petitioner is directed to be re-engaged. He shall be entitled to seniority and continuity from the date of his illegal disengagement. Seeing to the peculiar circumstances on record and more particularly the fact that the petitioner has not worked during the said interregnum with the respondent he shall not be entitled to any back wages. The issue is decided accordingly.

ISSUE NO. 2

19. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE NO. 3

20. No doubt the petitioner was terminated in the year, 2000 and the failure report was submitted by the conciliation officer on 5.6.2009. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon’ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon’ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram’s case (supra), there was a delay of 12 years. In Ramesh Chand’s case (supra) there was a delay of 9 years. In Mohinder Kumar’s case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

21. For all the aforesaid reasons discussed above the reference is allowed partly. The disengagement of the petitioner is set aside and quashed. The respondent is directed to re-engage

the petitioner forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal disengagement, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 21st day of January, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
 TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 224/2010

Date of Institution : 4.08.2010

Date of decision : 25.11.2011

Shri Puran Chand S/o Shri Bhimmi Ram, R/o Village Ghissal, P.O. Sach, Tehsil Pangi,
 District Chamba, H.P.

...Petitioner

Versus

The Executive Engineer, HPPWD Division (B&R) Pangi at Killar, Tehsil Pangi, District
 Chamba, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. T.R. Bhardwaj, AR

Sh. Inder Singh Jaryal, AR

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Puran Chand S/o Shri Bhimmi Ram, The by Executive Engineer, HPPWD Division (B&R) Pangi at Killar, Tehsil Pangi, District Chamba, (H.P.) w.e.f. September, 2004 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. In pursuance to the reference the petitioner has averred in his statement of claim that he was engaged on daily wages by the respondent in May, 1997 and worked as such till September, 2004 in Sub Division Sach. During the said period he completed more than 160 days continuous service in each calendar year.

3. It is further averred by the petitioner that he had never been charge-sheeted for any conduct of indiscipline or misconduct and he worked with the respondent with devotion. It is

further averred by the petitioner that the action of the respondent is illegal and unjustified and also against the principle of natural justice. Per the petitioner the said action of the respondent is also violative of the article 14 and 16 of the Constitution of India.

4. It is further averred by the petitioner that the respondent did not follow the principle of 'last come first go', as enshrined in Section 25-G. The persons junior to the petitioner who were engaged have since been retained while the services of the petitioner was dispensed with. The petitioner has named certain juniors like Kishan Chand, Prem Singh etc.

5. It is further the case of the petitioner that even after the disengagement of the petitioner fresh hands have been engaged by the respondent and as such the action of the respondent is also violative of the provisions of Section 25-H of the Act.

6. The petitioner thus claims his re-engagement with all consequential benefits.

7. The respondents while contesting the claim have inter alia raised the preliminary objections vis-à-vis maintainability, suppression of material facts and the reference is hit by the vice of delay and laches. It is also averred that the petitioner had abandoned the job of his own. Since he had not completed the criteria of 160 days in a few calendar years the petitioner was not regularized. The mandays of the petitioner has been annexed along with by the respondent. He had however abandoned job in the year 2004.

8. On merits it is the case of the respondent that the petitioner had abandoned his job and thereby also lost his seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have since been regularized, as per their seniority.

9. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

10. On 25.8.2011 the following issues were framed:

1. Whether the disengagement of the petitioner w.e.f. year 2004 is violative in the provisions of Section 25-F, 25-G & 25-H of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to?
..OPP
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto.
..OPR
3. Whether the reference is hit by the vice of delay and laches, as alleged. If so, to what effect?..
..OPR
4. Relief.

11. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes

Issue No.2 : No

Issue No.2 : No

Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS**ISSUE No. 1**

12. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

13. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in September, 2004. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job.

14. The mandays of the petitioner Ex. RW1/A, placed on record by the respondents is though suggestive of the fact that the petitioner had not completed 160 days in the 12 calendar months preceding his termination but other documentary evidence on record shows that Balak Ram, Hari Ram and Amar Nath, were appointed in the years 1997, 1998 and 1999 respectively as is clear from their mandays Mark-D on record. The seniority list of daily waged workers in respect of Killar Sub Division which has also been placed on record by the petitioner as Mark-B also shows that one Prakash Chand S/o Har Dyal had been appointed in the year 2001, Sucheta Ram S/o Shri Mahesh Chand had been also appointed in the year 2001 and Trilok Chand S/o Prem Lal had been appointed in the year 2002 as beldars. Two of the workmen have been engaged in the year 2006. If that was so the respondents have violated the provisions of Section 25-G as well as 25-H of the Act. These provisions are mandatory in nature. The non compliance of the two provisions is also fatal to the respondents. It can thus safely be said that the respondents while disengaging the petitioner has failed to abide by the mandatory provisions of Sections 25-G and 25-H of the Act.

15. It is now well settled that for seeking the protection of Section 25-G the requirement of having completed 240 days (in this case 160 days) is not a condition precedent as has been laid down by the Hon'ble Supreme Court in Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 and our own Hon'ble High Court in State of H.P. vs. Prem Lal 2010 (3) Him LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No. 3887/2011 decided on 3.6.2011). So, even if the petitioner had not completed 160 days in the preceding 12 months of his termination the respondents were still duty bound to have followed the principle of 'last come first go', which has not been done in the present case. Even while engaging people in the year 2006 and 2007, as is clear from Mark-D, the respondents should have offered opportunity to the petitioner to offer himself for re-employment. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith.

16. No specific evidence has been led to show that fictional breaks were granted to the petitioner. Nonetheless, the petitioner shall be entitled to seniority and continuity from the date of

his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the said interregnum, no back wages are being ordered in his favour.

ISSUE NO. 2

17. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE NO. 3

18. No doubt the petitioner was terminated in the year 2004 and the failure report was submitted by the Conciliation Officer on 14.5.2009. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation proceedings. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

19. For the foregoing reasons discussed hereinabove, the reference is allowed. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal

termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 55/2008

Date of Institution : 22.2.2008

Date of decision : 22.11.2011

Shri Raj Kumar s/o Shri Gokal Chand, Village Trayokna, P.O. Padawahan, Tehsil Padhar,
District Mandi, H.P.

....Petitioner.

Versus

The Divisional Forest Officer, Forest Division, Kullu, District Kullu, H.P.

...Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. N.L. Kaundal, A.R.

For the Respondent. :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Raj Kumar s/o Shri Gokal Chand workman by the Divisional Forest Officer, Forest Division, Kullu, District Kullu, H.P. w.e.f. Year, 2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified ? If not, what relief of back wages, amount of compensation and service benefits the above aggrieved workman is entitled to?”

2. The petitioner avers in the statement of claim that he was engaged as a daily wager on muster-roll basis as a Electrician by the respondent in August, 1998. He was engaged in Forest Range Kullu and thereupon worked continuously without any interruption till his disengagement. During his employment the petitioner had worked in Forest Range Kullu, Patlikuhall, and Manali. He had also worked in Forest Range Kasol, Jari, Sainj under Parwati and Banzar Division.

3. The services of the petitioner was disengaged in October, 2000 by way of a verbal order and without complying with the provisions of Industrial Dispute Act (hereinafter referred to as the Act). The petitioner had completed more than 240 days in the 12 calendar months preceding his disengagement, still no notice had been issued to the petitioner.

4. It is further the case of the petitioner that persons junior to him namely Kamal Kumar, Sanjay Gupta and Gori Shankar had been retained by the respondent. Kamal Kumar and Sanjay Gupta had been reengaged in pursuance to the Award passed by this Court alongwith 50 % backwages. The action of the respondent is thus violative of the Provisions of Section 25-F and 25-G of the Act. The petitioner thus claim his reengagement with all consequential benefit including backwages.

5. While contesting the claim the respondents have inter alia raised preliminary objections vis-à-vis maintainability, suppression of material facts, estoppel and the reference being hit by the vice of delay and latches.

6. On merits it is the case of the respondent that the petitioner was engaged as an Electrician to carry out certain repairs under the provisions of a authorized contractor who supplied electrical material for the said work in the building unit of Kullu Forest Division between December, 1998 and October, 2000. After October, 2000 there was no work and funds available and nor is their any post of an Electrician in the Department. It is denied that the petitioner was engaged from 1998 to June, 2001 without any interruption. The respondents have annexed mandays of the petitioner alongwith the reply. Per the respondent, electrical works were carried out through authorized contractors on lowest quoted rates, who used to supply electrical material and depute there skilled electrician and the petitioner had also been deputed by a contractor. It is further sought to be pleaded by the respondent that the petitioner left work at his own and did not turn up for work with the contractor. The respondent thus prays for the dismissal of the reference.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. I notice that on 27-12-2008 the following issues came to be framed by my Ld. predecessor.

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to?
... OPP.
2. Whether the service of the petitioner were never terminated but he had abandoned the job on his own
...OPR.
3. Whether the petitioner's claim suffers from the vice of delay and latches
....OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
Issue No.2 : No
Issue No.3 : No
Relief : Allowed partly, as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1 & 2

11. Both the issues are being discussed together as they are corelated and intermingled.

12. Per the respondent department the petitioner had not completed 240 days but the mandays of the petitioner Ex. RW1/C shows that the petitioner had in fact completed more than 240 days in the preceding 12 months. The said fact is also admitted by the D.F.O. while appearing as RW1. Admittedly no notice had been issued to the petitioner before his disengagement.

13. The respondents have raised a specific plea that the work of electrical fitting was awarded through an authorized contractor who supplied the electrical material along with the trained daily waged workman, who happened to be the petitioner. The same is deposition of the D.F.O., while appearing as RW1. In order to corroborate the case set up by the respondent one Sheri Ram, Senior Assistant office of the D.F.O. Kullu has been examined as RW2. He has placed on record the bill Vouchers issued in favour of the M/s Shivalik Electric Emporium, Kullu vide Ex. P1 to p14.

14. It is however not disputed by the D.F.O that the petitioner had been engaged on muster-roll between December, 1998 to October, 2000. The original record had been summoned by this Court and the perusal of the same also shows that the petitioner had been engaged on muster-roll basis. The plea of the respondent that the petitioner had been engaged through contractor for conducting electrical repairs is thus demolished. The voucher placed on record by RW2 vide Ex. P1 to P14 also shows that only material had been procured from M/s Shivalik Electric Emporium, Kullu. The Vouchers pertains to the material purchased by the respondent department alone. There is no evidence on record to remotely show that M/s Shivalik Electric Emporium was supplying material and an electrician for conducting the said repair. Even RW2 had admitted that the voucher Ex.P1toP14 do not reflects the payment of wages /repair to the contractor. It thus cannot be said that the petitioner was working as an electrician with the contractor and undertaking work at his behest. The muster-roll of the petitioner also belies the case set up by the respondent.

15. In fact the respondents have themselves tried to raise a plea of abandonment, though half heartedly. Not only are both the plea selfcontradictory but even the plea of abandonment had not been proved on record.. It has thus to be inferred that the petitioner has working as a daily wager with the respondent department.

16. Admittedly the petitioner has completed more than 240 days in the preceding 12 months of his disengagement. The petitioner has not been served any notice as contemplated under Section 25-F. His disengagement thus is violative of the provisions of Section 25-F of the Act. Consequently his disengagement is held to be illegal. As a sequel thereto, the respondents are directed to reengage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement. For the peculiar circumstances discussed hereinabove the petitioner shall not be entitled to any backwages. The issues are thus decided accordingly, partly in favour of the petitioner and against the respondent.

Issue No. 3

17. The petitioner was disengaged on October, 2000. The failure report was submitted by the Labour Inspector Bilaspur on 12-3-2007. In between the petitioner had raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as have been held by our own Hon'ble High Court in Naginder Kumar-vs- HPSEB (CWP No. 885/07 decided on 1-11-07) 2008(1) SLJ (HP) 425. In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007

(HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“.....While taking note of the entire case law with regard to the delay and latches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and latches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and latches. The issue is answered accordingly.

RELIEF

18. For all the aforesaid reasons discussed above the reference is partly decided in favour of the petitioner. Consequently the respondents are directed to reengage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement, though without backwages. The reference is decided in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 22nd day of Nov., 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 98/2007

Date of Institution : 25.8.2007

Date of decision : 06.01.2012

Shri Rajinder Sharma S/o Shri Jagdish Sharma, R/o Village H. No.373/11, Upper Mugwain, Mandi Town, Tehsil Sadar, District Mandi, H.P.

...Petitioner

Versus

Executive Engineer, HPSEB, Electrical Division, Mandi, Tehsil Sadar, District Mandi, H.P.

..Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Lalit Thakur, Adv.

For the Respondent :

Sh. Tarun Pathak, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Rajinder Sharma S/o Shri Jagdish Sharma workman by the Executive Engineer, HPSEB, Electrical Division, Mandi, Tehsil Sadar, District Mandi, H.P. w.e.f. 25.11.2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The short and simple case set up by the petitioner in the statement of claim is that the petitioner was engaged as a beldar on daily wages in HPSEB Electrical Division Mandi in May, 1998 and he continued working as such till 31.8.2000. The Assistant Engineer Sub Division Mandi vide his letter dated 28th of July, 2000 had informed the petitioner that he was not to come to work w.e.f. 1.9.2000. It was also stated in the notice that whenever any new work will be started the petitioner shall be intimated accordingly. No retrenchment compensation was paid to the petitioner at the time of issuing notice. The petitioner had completed more than 240 days in the preceding 12 months of his alleged disengagement.

3. It is further averred by the petitioner that at the time of his disengagement the respondent had not followed the principle of ‘last come first go’ as the persons junior to him were allowed to continue. One of them being Jagdish Kumar S/o Jeewan Singh who had been initially engaged on 15.11.1998.

4. The petitioner thus prays for his re-engagement with all consequential benefits.

5. While contesting the claim the respondents have inter alia raised preliminary objections vis-à-vis limitation and the reference being not maintainable.

6. On merits it is the contention of the respondent that the petitioner had been engaged for specific work on 25.6.1998 for construction of HT Line and Sub Station. Even during the period of his employment with the respondent Board the petitioner had not completed 240 days in each calendar year. It is denied that the principle of ‘last come first go’ was not followed by the respondent Board. It is further denied that persons junior to the petitioner had been retained by the Board while disengaging the petitioner.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. I notice that on 8.4.2009 the following issues had come to be framed by my Ld. Predecessor:

1. Whether the termination of the petitioner by the respondent w.e.f. 25.11.2000 is unlawful. If so, what relief the petitioner is entitled to?
..OPP
2. Whether the petitioner was engaged as daily waged beldar on June 25, 1998 for specific work namely construction of ‘H.T. Line & Sub Station’, and had abandoned the job on his own.
..OPR
3. Whether the petition suffers from the vice of delay and laches.
..OPR
4. Whether the claim petition is not maintainable.
..OPR
5. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
 Issue No.2 : No
 Issue No.3 : No
 Issue No.4 : No
 Relief. : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2

10. Both the issues are being taken up together for discussion as they are correlated and intermingled.

11. Though the respondents have pleaded that the petitioner had been engaged only for specific work relating to the construction of some HT Line w.e.f. 25.6.1998 and the same is also deposed by the Er. A.K. Khanotia, Sr. Executive Engineer HPSEB Mandi but no evidence has been placed on record to show that the petitioner was engaged as against specific work or that the petitioner had been informed at the time of his engagement that his engagement shall be co-terminus with any project or construction of the H.T. Line as claimed. The perusal of the mandays chart of the petitioner Ex. PW1/C shows that he had completed 240 days in the preceding 12 months of his disengagement. Not only this the mandays also shows that the petitioner had been working continuously and uninterruptedly w.e.f.25.6.1998 till 1.9.2000.

12. No doubt the notice had been issued to the petitioner on 28.7.2000 (Ex.PW1/B) but the same was not in consonance with the provisions of Section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act). No retrenchment compensation had been paid to the petitioner. The perusal of the seniority list on record further shows that the respondent Board had engaged one Uma Devi on 2.12.1998, Surinder Kumar on 15.10.1998 and Jagdish Kumar on 15.11.1999. It is thus apparent that the aforesaid workmen had been engaged after the petitioner. If that was so at the time of retrenching the petitioner the respondents had first to retrench the last workman engaged. Manifestly, the respondent had not followed the mandate of the statutory provisions of Section 25-G. Even to this extent the disengagement of the petitioner is bad. The plea of abandonment cannot be countenanced as the respondent had themselves issued a notice to the petitioner regarding his retrenchment. The disengagement being violative of the provisions of Section 25-F and 25-G of was thus bad in the eyes of law. Both the issues are thus decided in favour of the petitioner and against the respondent. As a sequel thereto the petitioner is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal disengagement, though except back wages.

ISSUE NO. 3

13. No doubt the petitioner was terminated in the year, 2000 and the failure report was submitted by the conciliation officer on 6.1.2006. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the

dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

ISSUE NO. 4

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

15. For all the aforesaid reasons discussed above the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal disengagement, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 6th day of January, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 475/2009

Date of Institution : 14.9.2009

Date of decision : 25.11.2011

Shri Ram Jeet S/o Shri Lithu Ram, R/o village Ghissal, P.O. Sach, Tehsil Pangi, District
Chamba, H.P.

...Petitioner

Versus

The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Gaurav Sharma, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ram Jeet S/o Shri Lithu Ram by Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P. w.e.f. Year, 2005 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that he was appointed as a beldar by the respondent in the year 1996 in I&PH Division Pangi at Killar. Thereafter he worked continuously and uninterruptedly till the year 2005, when his services were terminated orally, without any notice, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas his services were disengaged.

4. The petitioner thus contends that his termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of his termination.

5. The petitioner thus seeks his re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections that the petitioner was engaged in November, 1996 and worked as such till the year 2004. The petitioner had not completed the criteria of minimum 160 days in each calendar year.

7. On merits it is the case of the respondent that the petitioner had abandoned his job and thereby also lost his seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 27.8.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. Year 2005 is violative in the provisions of Section 25-F & 25-G of the Industrial Disputes Act, 1947, as alleged. If so, to what relief the petitioner is entitled to?

..OPP

2. Whether the petition is not maintainable, as alleged. If so, its effect thereto

.. OPR

3. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes

Issue No.2 : No

Relief. : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in September, 2004. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as his own witness has deposed that certain juniors to him were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, he was entitled to the protection of provisions of Section 25-G of the Act and the respondents were duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as State of H.P. vs. Prem Lal 2010 (3) Him. LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of

Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

ISSUE NO. 2

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

15. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 65/2008

Date of Institution : 22.2.2008

Date of decision :30.11.2011

Shri Ramesh Chand S/o Shri Banta Ram, R/o Village & P.O. Mumta, Tehsil & Distt. Kangra, H.P.

....Petitioner

Versus

Conservator of Forests, Working Plan Circle, Shimla-2, H.P.

....Respondents

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Shri N.L. Kaundal, AR
Shri Vijay Kaundal, Adv.

For the Respondents :

Shri Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Sh. Ramech Chand S/o Sh. Banta Ram, Village & PO Mumta, Tehsil & Distt. Kangra, H.P. by the Conservator of Forests, Forest Working Plan & Settlement, Shimla-2 w.e.f. 22.12.2000, without complying with the provisions of Industrial Disputes Act, 1947, is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. In pursuance to the reference it is averred by the petitioner that he was engaged by the respondent as a daily waged worker in February, 1997 and he worked under the control of DFO, Working Plan Division Dharamshala upto 16.3.1998. Thereupon his services were disengaged. The petitioner was constrained to file an O.A. No. (D) 325/99 before the Hon'ble Administrative Tribunal and on the basis of an order dated 24.3.2000 the petitioner came to be re-engaged by the respondent. The petitioner was again disengaged by the respondents in the month of June/July, 2000. Again O.A. No. (D) 495/2000 came to be filed by the petitioner and by virtue of an order passed by the said Tribunal the petitioner was again re-engaged on 9.11.2000. He thereafter worked till 22.12.2000 when his services were again dispensed with. The petitioner again filed an original application bearing O. A. No. (D) 554/2001. The disengagement of the petitioner (16.11.1999, June/July, 2000 and 22.12.2000) is stated to be illegal, unjust and arbitrary as no notice or charge-sheet had been served upon the petitioner and nor any retrenchment compensation had been paid to him as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. It is further stated by the petitioner that he had completed 240 days continuous service and as such the infraction of the provisions of Section 25-F renders his disengagement null and void.

4. It is further the case of the petitioner that one similar person Shri Kashmir Singh who had been working with the petitioner in the same Division at Dharamshala had also been terminated by the respondent. He too, had filed an O.A. No. (D) 106/2001 and had come to be reinstated by the respondent. He is still working with them. It is also averred by the petitioner that the respondents have retained persons junior to him in service and have also engaged fresh hands after his termination and as such the action of the respondent is also violative of the provisions of Section 25-G and 25-H of the Act.

5. Further, per the petitioner his original application No. 554/2001 had been dismissed on 13.10.2004 on the grounds of jurisdiction, with liberty to the petitioner to approach the competent forum and hence the present reference.

6. The petitioner thus prays for his re-engagement with all consequential benefits.

7. While contesting the claim the respondents have inter alia raised the preliminary objections vis-à-vis maintainability and suppression of material facts.

8. On merits it is the case of the respondents that the services of the petitioner were disengaged on 22.12.2000 by giving one month's notice as contemplated under Section 25-F of the Act along with the retrenchment compensation, but the petitioner had refused to accept the same. The respondents have annexed along with copy of the notice and the refusal thereto. Further, per the respondents, the petitioner had not completed 240 days in the preceding 12 months of his disengagement.

9. In respect of Kashmir Singh it is averred by the respondent that he was engaged on 27.12.1996 and had completed 240 days continuously for 10 years starting from 1997 to 2006. He was regularized in the year 2006 subject to the policy of the State.

10. It is further averred by the respondents that the services of the petitioner was disengaged on 22.12.2000 when the working plan division was wound up, after following the proper procedure, as per the Act. It is further submitted by the respondent that the work pertaining to a Working Plan Division are temporary and are in progress only till the preparation of the working plan. The preparation of Dharamshala Working Plan was completed during May, 2001, which necessitated the disengagement of the petitioner.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I notice that on 7.6.2008 the following issues had been framed by my Ld. Predecessor:

1. Whether the termination of services of the petitioner Ramesh Chand by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation he is entitled to? . . . OPR.
2. Whether the petitioner is guilty of suppressio very . . . OPR.
3. Relief.

13. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Partly yes.
 Issue No.2 : No
 Relief. : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

14. The simple case set up by the petitioner is that his disengagement w.e.f. 22.12.2000 was illegal and unlawful as no notice had been served to the petitioner, as contemplated under Section 25-F of the Act and neither any charge sheet had been served on him and nor any inquiry conducted against him before disengaging him. It is also sought to be portrayed that persons junior to the petitioner had been retained and even fresh hands have been engaged after his disengagement and as such the action of the respondent is violative of the provisions of Section 25-G and 25-H of the Act.

15. Per contra, the respondents are stated to have issued retrenchment notice under Section 25-F of the Act on 18.11.2000 doing away with the services of the petitioner w.e.f. 19.12.2000. The retrenchment compensation amounting to Rs.2295/- was also stated to have been sent along with, by way of cheque, vide Ex.RW1/B. Over and apart it is the specific contention of the respondents that the services of the petitioner was terminated on 22.12.2000 when the working plan division had been wound up and proper procedure under the Act had been resorted to while disengaging the services of the petitioner. The respondents have further averred that though the petitioner had not completed 240 days in the preceding 12 months of his disengagement, yet a notice was issued to him. The work pertaining to the work plan divisions are stated to be temporary in nature and remained in existence only till the preparation of the working plans of the concerned division.

16. The retrenchment notice Ex. RW1/B also categorically corroborates the fact that since the working plan has been submitted the division was being closed and as such the services of the petitioner would no longer be required. The Chief Conservator of Forest Working Plan and

Settlement, Mandi who has appeared as RW1 has also deposed on the same lines. As per Ex. RW1/C it is apparent that the petitioner had refused to receive the retrenchment compensation, so sent by the respondent.

17. The fact does emerges from the evidence on record is that the disengagement of the petitioner was necessitated because of the wounding up of the working plan division. More particularly, as the working plan had been submitted by the respondent. The respondent thus was very much within its right to have exercise the option contemplated by Section 25-F of the Act and the respondents had as per Ex. RW1/B issued retrenchment notice to the petitioner.

18. The Ld. Authorized Representative of the petitioner has further strenuously argued that the respondents had retained persons junior to him and also engaged fresh hands after the disengagement of the petitioner and as such the action of the respondent is violative of the provisions of Section 25-G and 25-H of the Act. In this behalf much stress has been laid on Ex. D1 which is a seniority list of workmen prepared by the respondent. The Chief Conservator of Forest Shri Chandresh Sharma while appearing as RW1 has admitted that Ex. D1 has been prepared by the department. The witness has further admitted that Sunder Singh reflected at serial No.1 was working with the respondent on 22.12.2000 and even one Tek Singh reflected at serial No.3 was engaged on 18.11.2002 and the said workmen is still working with the respondent. He has also admitted that when Tek Singh was engaged no notice was issued to the petitioner for re-engagement. The witness has further tried to portray that the workmen reflected in Ex. D1 were posted in Kangra Division. However, the witness has deposed that Ex. D1 is a seniority list pertaining to the Dharamshala Working Plan Division. He has also admitted that Kashmir Singh was initially engaged at Dharamshala and is presently working at Shimla. The mandays of Kashmir Singh has also been placed on record vide Ex. RW1/F.

19. As per the evidence on record Kashmir Singh was engaged in 1996 and he has continuously worked (with 240 days in each calendar year till the year 2006).

20. No doubt, since the working plan had been submitted the respondents were within there right to have retrenched the services of the petitioner, but the same was liable to be done strictly on the principle of 'last come first go', as envisaged under Section 25-G of the Act. The Chief Conservator of Forest, while appearing as RW1 has admitted that Ex. D1 pertains to the entire Dharamshala working plan division. If that was so, it clearly emerges from the seniority list that Sunder Singh was junior to the petitioner as he was engaged for the first time on 18.11.1998 while one Tek Singh had been engaged for the first time on 18.11.2002. If that was so the action of the respondents in disengaging the services of the petitioner was not strictly in compliance with the principle of 'last come first go' and nor the provisions of Section 25-H had been followed while engaging fresh hands. Both the provisions are mandatory in nature. The non compliance of mandatory provisions of the Act is thus fatal to the respondent. Not only this by now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can ably be drawn by the judgments of the Hon'ble Supreme Court in Central Bank of India vs. S. Satayam, 1996 (5) SCC 419 and Harjinder Singh vs. Punjab State Ware House Corporation, 2010 (3) SCC 192 and our own Hon'ble High Court in State of H.P. vs. Prem Lal 2010 (3) Him LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No. 3887/2011 decided on 3.6.2011). To this limited extent the disengagement of the petitioner is illegal.

21. The respondent while disengaging the petitioner has not followed the principle of 'last come first go'. Even if the working plan had been submitted the petitioner based on his seniority should have been offered employment in some other part of the working plan division. This gains significance because even as per RW1 the seniority list of workmen is maintained at divisional

level. The respondents were duty bound to have maintained the divisional level seniority list and thereupon resorted to retrenchment strictly on the basis of the seniority. A bare glance at Ex. D1 shows that such procedure was not followed by the respondent. To this limited extent the disengagement of the petitioner is bad, being violative of the provisions of the Section 25-G and 25-H of the Act. Consequently the action of the respondents is set aside. The petitioner is directed to re-engage forthwith. Seeing to the peculiar circumstances of the fact discussed hereinabove the petitioner shall not be entitled to any back wages, more particularly since the working plan vis-à-vis Dharamshala had already been submitted and thereupon the petitioner otherwise had to be stationed at some other place in the division. The issue is accordingly decided partly in favour of the petitioner and against the respondent.

ISSUE NO. 2

22. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

RELIEF

23. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall not be entitled to back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today the 30th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 454/2009

Date of Institution : 28.8.2009

Date of decision : 7.01.2012

Shri Ravi Kumar S/o Shri Diwan Chand, R/o Village Gusenka, P.O. Bag, Tehsil Ladbhrol,
Distt. Mandi, H.P.

...Petitioner

Versus

The Additional Superintending Engineer, HPSEB Electrical Division Joginder Nagar, Distt.
Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent :

Sh. Abhisekh Lakhanpal, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ravi Kumar S/o Shri Diwan Chand, by the Additional Superintending Engineer, HPSEB Electrical Division Joginder Nagar, Distt. Mandi, H.P. w.e.f. 21.10.2004 without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The short and simple case set up by the petitioner in the statement of claim is that he was engaged as a beldar on daily wages by the respondent in 1997. He thereafter worked as such uninterruptedly till 20.10.2004. Thereafter the services of the petitioner was disengaged without any notice, charge sheet or inquiry nor he was paid one month's salary in lieu of the notice. The petitioner was not granted any retrenchment compensation.

3. It is further averred by the petitioner that while dispensing his services the principle of 'last come first go' was not followed by the respondent and persons junior to him were retained namely Piar Chand, Vijay Kumar, Rakesh Kumar, Onkar Singh, Tilak Raj, Janak Raj, Raj Kumar and Sanjay Kumar.

4. It is further the case of the petitioner that after his disengagement the respondent had engaged fresh hands too.

5. The petitioner thus contends that the action of the respondent is violative of the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and as such his disengagement is void and illegal.

6. The petitioner thus prays that he be ordered to be re-engaged with all consequential benefits.

7. The respondents while contesting the claim have raised preliminary objections that the reference is misconceived, the petitioner has no locus standi and that the reference was not maintainable as the lis had already been decided by this Court vide an order dated 22.3.2006.

8. On merits it is the contention of the respondent that the petitioner was engaged in the year 1997 and he served upto 14.8.2001 with certain interruptions and breaks. Thereafter the petitioner joined in the year 2003 and worked till 2004, though intermittently. The mandays of the petitioner have been placed on record. After 20.10.2004 the petitioner is stated to have never turned up for work. Even otherwise he is stated to be irregular in work and appointed for specific purpose and work only. The rest of the contents of the statement of claim were denied by the respondent. The respondent thus prays for the dismissal of the claim.

9. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

10. On 8.7.2010 the following issues had come to be framed by this Court:

1. Whether the termination of the petitioner w.e.f. 21.10.2004 is violative of the principles of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to?

..OPP

2. Whether the petitioner has no locus standi to prefer the present reference, as alleged. If so, its effect thereto. . . OPR
3. Whether the reference is not maintainable as alleged. If so, its effect thereto. . . OPR
4. Relief.

11. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
 Issue No.2 : No
 Issue No.3 : No
 Relief. : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 3

12. The respondents have raised a specific objection that the present referenced is not maintainable as this Court has already decided the lis against the petitioner vide an award passed by this Court on 23.3.2006. In fact the said award has not been placed on record by the respondent. No doubt the Additional Superintending Engineer Sh. Parvesh Thakur while appearing as RW1 has deposed that the matter has already been decided by this Court vide an award dated 23.3.2006 but the reference in question pertains to the disengagement of the petitioner w.e.f. 21.10.2004. Not only this the RW1 has himself further deposed that the petitioner had again served the respondent Board in the year 21.10.2003 to 20.10.2004. It is thus manifestly clear from the evidence on record that the earlier award was not relating to the same cause of action. It apparently pertained to the disengagement of the petitioner prior to the year 2003. In the present case namely Ravi Kumar vs. Addl. Supdt. Engineer HPSEB the earlier award has been placed on record but the same pertained to the disengagement of the petitioner on 15.8.2001). The mandays on record Ex. RW1/B also shows that the petitioner has worked continuously with the respondents w.e.f. 21.10.2003 to 20.10.2004. The earlier reference was not on the same cause but apparently vis-à-vis the disengagement of the petitioner prior to the year 2003. It thus cannot be said that the present reference is not maintainable. The issue is thus decided against the respondent.

ISSUE NO. 1

13. Now advertent to the factual matrix of the case, it is more than clear from the mandays of the petitioner Ex. RW1/B that the petitioner had put in 272 days in the preceding 12 months of his disengagement. Though the respondents have pleaded that the petitioner was engaged for specific work but the mandays of the petitioner placed on record belie the case set up by the respondent. Even otherwise no evidence has been led to show that the petitioner was engaged against specific work. The respondents have also placed on record a purported notice of retrenchment issued to the petitioner and 9 other workmen vide Mark-X. The said notice was issued under Rule 14(2) of the Certified Standing Orders giving 10 days notice to the petitioner on the premises that the work against which the petitioner was engaged has come to an end. The said retrenchment notice under Rule 14(2) of the Certified Standing Orders was issued on 15.10.2004. The said notice cannot be countenanced in any manner more particularly because the respondent Board itself has specifically pleaded in umpteen number of cases that the Board has been exempted from the operation of the Standing Orders w.e.f. 11.9.1985. Though this has not been pleaded in the present case but judicial notice can taken of the fact, as this defence is propounded by the Board in

almost all cases coming up before this Court. Even otherwise the said notice cannot be taken into consideration as the petitioner had admittedly completed more than 240 days in the preceding 12 months of his disengagement and he was thus entitled to the protection of the provisions of Section 25-F of the Industrial Disputes Act. The disengagement of the petitioner thus is violative of the provisions of Section 25-F.

14. That being so even the purported notice issued to the petitioner (Mark-X) was against the principle of 'last come first go' and as such against the statutory provisions of Section 25-G. Even if notice is assumed to be legally sustainable though it has been held not to be, the disengagement of the petitioner was violative of the provisions of Section 25-G of the Act.

15. The Ld. counsel for the respondent Board has also placed reliance upon the judgment of Hon'ble Supreme Court titled as Bharat Sanchar Nigam Ltd. vs. Man Singh (2011 STPL (Web) 966) to contend that even if the order of retrenchment is passed in violation of Section 25-F, rather than reinstating the petitioner he should be granted compensation to meet the ends of justice. No doubt the judgment of the Hon'ble Supreme Court does talk in the aforesaid terms but in the present case over and apart from the violation of Section 25-F the respondent Board has retained innumerable workmen who had come to be engaged after the petitioner and were junior to the petitioner. The retention of persons junior to the petitioner thus gives him a right to claim parity with those who had subsequently joined the respondent Board. In fact in place of the petitioner it was the juniors who were to give way, at the time of retrenchment. The provisions of Section 25-G are statutory and binding in nature. The ratio of the aforesaid judgment of the Hon'ble Supreme Court is thus not applicable to the fact and circumstances of the present case.

16. The action of the respondent thus is palpably illegal and against the mandate of Section 25-F and 25-G of the Act. Consequently the respondent is directed to re-engage the petitioner. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement. However due to the peculiar circumstances discussed above the petitioner is not entitled to any back wages. The issue is decided accordingly.

ISSUE NO. 2

17. Nothing has been urged and brought to my notice how the petitioner has no locus standi from this court. The issue is decided against the respondent.

RELIEF

18. For all the aforesaid reasons discussed above the reference is allowed partly. The respondent is directed to re-engage the petitioner forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 7th day of January, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 37/2010

Date of Institution : 23.4.2010

Date of decision : 30.12.2011

Shri Sanjeev Kumar S/o Late Sh. Anirudh, R/o Village & P.O. Darini, Tehsil Shahpur,
Distt. Kangra, H.P.

...Petitioner

Versus

The Executive Engineer, Khauli Construction Division HPSEB Shahpur, Distt. Kangra,
H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. N.L. Kaundal, AR,
Sh. Vijay Kaundal, Adv.
Sh. Pardeep Dogra, Adv.

For the Respondent :

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Sanjeev Kumar S/o Late Shri Anirudh, by The Executive Engineer, Khauli Construction Division HPSEB Shahpur, Distt. Kangra, H.P. w.e.f. 16.6.2008 without complying the provisions of The Industrial Disputes Act, 1947, is proper and justified? If not, what relief of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he was engaged as part time sweeper by the respondent on 9.7.1999. The petitioner has worked for 4 hours per day but he has been only paid wages for 2 hours in a day from 9.7.1999 to 15.6.2008. The petitioner had worked to the full satisfaction of his superior, however his services were disengaged on 16.6.2008 and that too without issuing any notice as contemplated under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). No notice or retrenchment compensation had been paid to the petitioner.

3. Immediately after his disengagement the petitioner had raised an industrial dispute on 29.7.2008.

4. The petitioner thus prays for his re-engagement with all consequential benefits.

5. While contesting the claim the respondents have inter alia raised preliminary objections vis-à-vis maintainability, locus standi, estoppel, non joinder of necessary parties, material concealment of fact and the claim being barred by limitation.

6. On merits the engagement of the petitioner is not disputed. It is however the case of the respondent that the petitioner was engaged for 2 hours and has been paid accordingly, throughout the period of his engagement. It is denied that the services of the petitioner was terminated. Per the

respondent the petitioner had himself abandoned job after 15.6.2008 and thereafter never turned up for work. The work of Khauli construction division is also stated to have been completed in June, 2008 and the said division is now closed. The other part time workmen with the respondents at that time are also doing their job elsewhere after closure of the division. It is further averred by the respondent that as and when a vacancy shall arise with the respondent the petitioner shall be obliged first. The respondent thus prays for the dismissal of the claim.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. On 15.2.2011 the following issues had been framed by this Court:

1. Whether the termination of the petitioner w.e.f. 16.6.2008 is violative of the provisions of Section 25-F of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . . . OPP
2. Whether the reference is not maintainable, as alleged. If so, to what effect? . . . OPR
3. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes
 Issue No.2 : No
 Relief. : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

10. Admittedly the petitioner has worked as a part time sweeper with the respondent w.e.f. 1.4.1999 till 30.6.2008. The mandays on record show that the petitioner was in continuous service and he worked uninterruptedly. The mandays show that the petitioner had completed more than 240 days in the preceding 12 months of his disengagement.

11. Though the respondents have pleaded that the petitioner had himself abandoned job after 15.5.2008 and never reported for duty thereafter and even the work of Khauli construction division had been completed in June, 2008 leading to its closure. But while leading evidence the respondents have taken a diametrically opposite stand. As per RW1, one Pawan Kumar, the petitioner had been engaged as a part time sweeper w.e.f. 1.4.1999 vide office order Ex. RW1/B. Per the witness the petitioner was engaged against specific work which has since been completed and now there were no funds/work available with the respondent and therefore the services of the petitioner couldn't be continued. A verbal notice had been issued to the petitioner and after the said notice the petitioner had not objected and promised to leave the job of his own and not return to his duty. The RW1 has not whispered a word about the closure of the project. Though he has deposed that the petitioner was engaged against specific work and a verbal notice had been issued to him but the perusal of Ex. RW1/B i.e. the appointment letter nowhere shows that the petitioner was engaged for specific work. It does show that initially the petitioner was engaged from 1.4.1999 to 31.3.2000, but admittedly thereafter he had continuously working till the year 2008, as is clear from the mandays placed on record by the respondent along with the reply.

12. From the evidence led by the respondents it nowhere comes to the fore that the Khauli construction division had been closed, no evidence has been led on this score. The pleaded case of

the respondents themselves was that the petitioner had abandoned job, but the witness for the respondent has not even whispered a word regarding abandonment. Per the witness (RW1) the petitioner had been engaged against specific work and since the same had been completed the petitioner was issued a verbal notice for want of funds and work. Be it as it may, the case pleaded by the respondent has not been proved on record. It is thus clear that the services of the petitioner was dispensed with by the respondent on 16.6.2008.

13. The respondents however debated that since the petitioner was engaged on part time basis he was not entitled to the protection of the provisions of Section 25-F. On the contrary the Ld. counsel for the petitioner has urged that the engagement of the petitioner falls within the definition of “workman”, as envisaged under Section 2(s) of the Act and as such his disengagement against the mandatory provisions of Section 25-F was illegal. In this behalf reliance has been placed on the judgment of the Hon’ble Supreme Court titled as Divisional Manager, New India Assurance Co. Ltd. vs. A. Sankaralingam [2008 (119) FLR 398]. The ratio laid down in the aforesaid judgment clearly lays down that the definitions of Section 2(s) and 25-B of the Act reveals that their applicability is not limited to only full time employees but all that is required is that the workman claiming continuous service must fulfill the specific conditions amongst others laid down under the two provisions so as to seek the shelter of Section 25-F. While further considering the entire ambit of law it was held by the Hon’ble Supreme Court that a part time workman would be covered within the definition of Section 2(s) of the Act and he would be entitled to the benefit of continuous service if he fulfills specific conditions of Sections 2(s) and 25-B and resultantly shall be entitled to the benefits of Section 25-F as well.

14. The ratio of the aforesaid judgment discussed hereinabove supra is thus categorical that a workman engaged on part time basis is covered under the terms of Section 2(s) of the Act. As has been discussed hereinabove the petitioner was in continuous service, vis-à-vis the requirement of section 25-B and as such he was entitled to the protection of the provisions of Section 25-F. Admittedly no notice had been issued to the petitioner. The plea of abandonment so raised by the respondent has not been proved. It is thus manifest from the record that the disengagement of the petitioner was against the statutory provisions of the Act as no notice under Section 25-F had been issued to the petitioner. Even if the division was being closed the respondent had to issue notice in terms of Section 25-F, though it is a separate matter that closure has not been proved on record. The disengagement of the petitioner thus is violative of the provisions of Section 25-F of the Act. The disengagement of the petitioner is thus set aside and quashed. Consequently the respondent is directed to re-engage the petitioner in the same place and post forthwith. Seeing to the peculiar circumstances of the case no back wages are being awarded in favour of the petitioner. The issue is thus accordingly decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

15. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

16. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The disengagement of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner in the same place and post forthwith, though except back wages. The petitioner shall

however be entitled to seniority and continuity from the date of his illegal disengagement. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today the 30th day of December, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P.
 INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA (H.P.)**

Ref. No. : 19/2009

Instituted on : 26.2.2009

Decided on: : 5.12.2011

Smt. Satya Devi W/o Shri Gian Chand, R/o Village Reour, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....Petitioner

Vs

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Suresh Kumar Sharma, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The appropriate Government seeks adjudication by this Court on the following point of Reference:

“Whether retrenchment of services of Smt. Satya Devi W/o Shri Gian Chand by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f.08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex.-Worker is entitled to from the above Employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as a daily waged beldar by the respondent on 1.1.1999 in Dharampur Division of HPPWD. She continued to work as such till 7.7.2005 and her services were dispensed with illegally w.e.f. 8.7.2005.

3. It is further the case of the petitioner that the respondent had maintained no seniority and person juniors to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of “First come, last go”. The action of the respondent is violative of the provisions of Sections 25-N, 25-G and 25-H.

4. The petitioner has further impugned the notification issued by the Government of H.P. dated 14.2.2005 whereby the State of H.P. had conferred powers of the "specified authority" as envisaged under the provisions of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) on the Chief Engineer, Central Zone Mandi. The petitioner further averred that since the Chief Engineer was directly related with the employment of the petitioner and as such the action of the State of H.P. in appointing as specified authority under the Act was per se legal. The Chief Engineer was as interested party, the notices issued to the petitioner under Section 25-N of the Act were thus illegal. The workmen had filed a Civil Writ Petition before the Hon'ble High Court of H.P. vide CWP No.486/05 and during the pendency of the same the State rescinded the notification dated 14.2.2005 and the said powers was thereupon conferred upon the Labour Commissioner. Per the petitioner the aforesaid notification dated 14.2.2005 had been issued merely to retrench the petitioner and other workmen in Dharampur division.

5. It is further averred by the petitioner that she has completed 240 days during the preceding 12 calendar months prior to her termination.

6. The petitioner thus seeks that the notification dated 14.2.2005 under Section 25-N be declared null and void and the petitioner be ordered to be reinstated with full back-wages, seniority and other consequential benefits.

7. The respondent while contesting the claim of the petitioner has inter-alia raised the preliminary objections of the reference being not maintainable, it being hit by delay and laches, suppressio veri and the petitioner being estopped by her act and conduct from filing the claim.

8. On merits without primarily disputing the factual narration it is the case of the respondent that the services of the petitioner has been dispensed with as per the provisions of the Act after the specified authority cum-Chief Engineer (CZ) Mandi had given permission for retrenchment of 1087 workmen out of the total of 1636, after following the provisions of Section 25-N of the Act. The petitioner and other workmen were stated to have been retrenched after having been given three months basic pay in lieu of notice and retrenchment compensation as provided under the Act.

9. It is also averred by the respondent that the retrenchment was necessitated because of surplus-age of labour and paucity of funds with the department. Further per the respondent a large number of labourers have been indiscriminately engaged on bifurcation of the Dharampur division out of Sarkaghat division w.e.f. 7th November, 1998 till 6/1999 whereby 3734 additional people were employed in the division taking the total strength of labour to 4045. The department was thus being constrained to maintain the labour strength out of the non-plan expenditure. Thus, to avoid financial hardship to the department action had been initiated under Section 25-N by the respondent. The retrenchment of the petitioner and other workmen was thus stated to be in accordance with the provisions of the Act.

10. While filing rejoinder the petitioner controverted the averments in the reply and reiterated those taken in the statement of claim.

11. Based on the pleadings the following points came to be framed for determination:-

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged. If so, to what effect?
2. Whether the termination of the petitioner is also violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged. If so, to what effect?

..OPP

..OPP

3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, to what effect?
.. OPR
4. Whether the reference is not maintainable, as alleged. If so, to what effect?
.. OPR
5. Relief.

12. On the basis of the close analytical analysis of the pleadings, evidence and other attendant material placed on record, my findings on these issues are as under:-

- Issue 1 : Yes. The petitioner is entitled to reinstatement, along with Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination.
- Issue 2 : Yes.
- Issue 3 : No
- Issue 4 : No
- Relief. : The petition allowed partly per operative part of the award.

REASONS FOR FINDINGS

ISSUES No.1 and 2

13. Both the issues are being taken up together for discussion as they are correlated and intermingled.

14. It is not disputed by the respondent that the petitioner was not employed as a beldar. The factual narration therefore does not require much deliberations. The case of the respondent simpliciter is that due to surplus manpower the respondent resorted to the special provisions as enunciated in Chapter VB of the Act for retrenchment of the petitioner and other workmen serving in Dharampur Division of HPPWD, Mandi. This is the pith and substance of the respondent's case. In this behalf the State appointed the Chief Engineer, Central Zone, Mandi to be the "specified authority", who allowed the respondent no.3 to retrench the petitioner and roughly a thousand other workmen.

15. It would be apposite to highlight the provisions of Section 25-N, under which the petitioner has been retrenched. It appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) *"industrial establishment"* means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

16. The question that arises for determination is: Whether or not Dharampur Division of Public Works Department is an 'industrial establishment' within the meaning of clause (a) of Section 25L of the Act. The answer, to my thinking, is in the negative. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

“(m) “factory” means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

17. The parties' pleadings are non-existent in such averments as may show Dharampur Division of HP.PWD wherein the petitioner was engaged to be a "factory" as defined above. Also, there is nothing to suggest that in the said Division some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. Dharampur Division of HP.PWD, particularly such area thereof where the petitioner was engaged also cannot be said to be an "industrial establishment" within the meaning of section 25L (a) of the Act. Section 25N of the Act under which the petitioner's services were dispensed with, its material part reads:

“25N. *Conditions precedent to retrenchment of workmen.*

- (a) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
- (b) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (c) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and

the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

18. Once Dharampur Division of HP.PWD, particularly such location where the petitioner was said to have been engaged, is not proved to be an “industrial establishment” within the meaning of Section 25L (a) of the Act, the petitioner’s retrenchment under the above provisions cannot be said to be lawful.

19. No doubt, ordinarily, it is the management has to determine the dead weight of uneconomic surplus-age and order retrenchment. But it has to be bonafide. The process by which the said determination is made should look to be fair, proper and devoid of any ulterior motive. It should be free of the vice of capriciousness. The authority having been vested in the Chief Engineer, however brings the conduct of the respondents into doubt. Seemingly it makes the act of the respondent actuated with improper motive and treatment being met to the workmen as “malafide”.

20. Now adverting to another interesting aspect which stares one at the face and ex-facie seems to be against the cardinal and basic principle of law. The notification under Section 25-N has authorized none else but the Chief Engineer, HPPWD Central Zone, Mandi to be the “specified authority” from whom the respondent 3 i.e. the Executive Engineer HPPWD, Dharampur was to take permission for the retrenchment of the petitioner and other workmen. The Chief Engineer being head of the zone and in the present case being directly responsible for the administration of Dharampur division has been notified to be the specified authority. In a sense he has been made a judge in his own cause. It is not only against the principles of law but against the basic cannons of natural justice. The action of the State appointing the Chief Engineer of the Central Zone as specified authority was thus ipso facto illegal and as it emerges from the pleadings on the record, the State had itself withdrawn/rescinded the said notification. It is thus to be held that it was indeed void ab initio. Any action in pursuance to the said notification was and is bad in the eyes of law.

21. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

22. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

“25B. *Definition of continuous service.* For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

23. The petitioner in paragraph 7 of her statement of claim claimed to have worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment. This claim of her having not been specifically disputed in the respondent's reply, deserves acceptance.

24. Not only this the perusal of the record more particularly the seniority list Ex. PW1/C categorically shows that the respondents have engaged daily waged beldars after the petitioner was shown the door. She came to be employed on 1.1.1999. Innumerable people came to be appointed as daily waged beldar thereafter. The provisions of the Act inter alia stipulate that an employer shall follow the principle of “last come first go” as per the requirements of the provisions of Section 25-G of the Act, which reads as under:

“25-G. *Procedure for retrenchment.*- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

25. The question of the juniors having been retained by the respondent is not only admitted by the respondent in paragraph 4 of the reply but has also been testified to be correct by the Executive Engineer, Shri Naresh Kumar Sharma who has appeared as RW1. The reply and the

testimony of the Executive Engineer lends assurance to the allegation of the petitioner that juniors had been retained by them, while her services have been dispensed with.

26. Further, the petitioner in her affidavit Ex. PW1/A alleged that the workmen namely Savitri Devi W/o Sh. Roshan Lal, Rajesh Kumar S/o Sh. Sunder Singh, Shashi Lal S/o Bihari Lal, Satpal S/o Sunder, Roshani Devi W/o Nag Ram, Gulab Singh S/o Bhalkhu, Devinder Kumar S/o Ram Dyal, Barfu Ram S/o Haru Ram, Krishana Devi W/o Prem Singh, Achhri Devi W/o Sh. Prabha Ram, Barfi Devi W/o Amrit Lal, Raj Kumar S/o Sh. Chand Ram and Ranjeet Singh S/o Sh. Kashmir Singh, who were junior to her, were still working with the respondent. Of these workmen, however, only one namely Roshani Devi, who figures at serial no. 652 in the seniority list Ex. RW1/A-2 and is shown to have been engaged on July 4, 1999, was indubitably junior to the petitioner. The said seniority list is indicative of Roshani Devi having been retained in service at the time the petitioner was retrenched. In terminating the services of the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act as well. The petitioner is therefore entitled to reinstatement and continuity of service from the date of her unlawful retrenchment.

27. The respondents have not only violated the provisions of the Act as discussed above but have yet again failed to respect the statutory mandate of Section 25-H which obligates the respondents to re-engage the retrenched workmen as per their seniority. In other words if the employer recruits fresh hands without offering employment to the persons previously retrenched the employer shall be committing breach of the provisions of Section 25-H of the Act which is otherwise mandatory in nature. The perusal of the seniority list Ex. PW1/C shows that the respondent had employed daily waged beldars even in the year 2006. One Rattan Chand S/o Shri Khem Chand whose name figure at serial no. 698 was appointed on 13.3.2006. One Sukh Ram S/o Dido Ram also came to be appointed on the same date. One Jagdev S/o Shri Ranjeet Singh who is figuring at serial no. 700 of the seniority list (Ex. PW1/C) came to be appointed on 1.2.2006.

28. The Hon'ble High Court of H.P. while dealing with similar matters arising out of the awards passed by this Court in respect of the retrenchment relating to 1087 workmen of Dharampur Division in Mandi vide CWP No.1387/2010 titled as Executive Engineer vs. Nihal Chand and other connected matters decided on 13.5.2010 has held the workmen entitled to a lump sum amount of Rs.50,000/- in lieu of back-wages, litigation expenses and compensation. To this extent the awards passed by this Court stand modified by the Hon'ble High Court. In view of the aforesaid circumstances and in order to avoid discrimination among the workmen, the petitioner shall be entitled to an amount of Rs.50,000/- in lump sum in lieu of back-wages, litigation expenses and compensation. The issue under discussion is accordingly held in her favour and against the respondent.

29. The petitioner having been retrenched on 8.7.2005, it is more than clear that the respondent had offered employment to fresh hands after the disengagement of the petitioner. The petitioner had a preferential right to be offered re-engagement on the basis of the provisions of Section 25-H of the Act and any violation thereof smacks of mala fide, apart from the same being illegal, arbitrary, unjust and against the mandate of the Act.

30. The infraction of the provisions of Section 25-H is in itself fatal to the respondents as it is well settled preposition of law that the applicability of the two provisions is not confined only to workmen who were in continuous service for one year and above, as provided in the Act, but to all retrenched workmen. Even if the provisions of Section 25-F are not attracted the provisions of Section 25-H is independently sufficient to protect the rights of workmen. The non-application of 25-F shall not prejudice the right of the workmen under the provisions of Section 25-H. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court, titled as Central Bank of India vs. S. Satyam and Ors. (1996) 5 SCC 419.

31. The petitioner in paragraph 4 of her affidavit Ex. PW1/A inter alia averred “*that after her illegal retrenchment she tried her level best to secure job but she did not get the same till today and she has no source of income even to have two square meals per day for her and her family members....*” There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. Not only this, there is no cross-examination of the petitioner on this aspect of the matter. In view of the facts and circumstances of the case and more so the fact that the respondents have brazenly offended the statutory provisions of Section 25-G and even 25-H by appointing fresh hands in the year 2006 without offering engagement to the retrenched workmen, the petitioner is held entitled to Rs.50,000/- as a lump sum amount in lieu of back-wages, litigation expenses and compensation with continuity of service from the date of termination. The issue under discussion is accordingly held in her favour and against the respondent.

ISSUE 3

32. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon’ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

33. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/45/05 & 586/07-10104, dated 8.12.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/2008-Mandi dated January 5, 2009. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps she took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.’s aforementioned contention merits rejection and is rejected. Not only this the illegal retrenchment and the permission granted thereto by none else but their own Chief Engineer had also come to be challenged by way of a Writ petition being CWP No.486/05 and therein to liberty had been granted to the workmen to take suitable action as per law. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

ISSUE 4

34. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

35. Judged in the light of my findings on the issues above, the petition succeeds and is allowed in the following terms. The petitioner is held entitled to reinstatement with Rs.50,000/- as lump sum amount in lieu of back-wages, litigation expenses and compensation along with continuity of service from the date of her unlawful retrenchment (July 8, 2005). The respondent is directed to reinstate the petitioner forthwith. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 5th day of December, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
 TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 187/2005

Date of Institution : 19.11.2005

Date of decision : 19.11.2011

Shri Parveen Kumar son of Sh. Paras Ram Village Gothru, P.O. & Tehsil Bharmour, Distt. Chamba, H.P.

. .Petitioner.

Versus

1. The Director, Rural Development Deptt. H.P., Shimla.
2. The Project Officer, Distt. Development, Organisation, Chamba, H.P.
3. The Asstt. Commissioner Dev.-cum-B.D.O., Bharmour, Distt, Chamba, H.P.

. .Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. T.R. Bhardwaj, A.R.

For the Respondent. :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Parveen Kumar s/o Sh. Paras Ram workman by the (1) The Director, Rural Development Deptt. H.P. Shimla-9 (2) The Project Officer, Distt. Development Organisation, Chamba, H.P. (3) The Asstt. Commissioner (Dev)-cum-B.D.O., Bharmour, Distt. Chamba, H.P.w.e.f.9-8-2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified ? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. In furtherance to the reference it is averred by the petitioner that he was engaged as a Beldar/ Labourer by the respondent No.3 the Block Development Officer, Bharmour in the month of July, 1992. He continued as such till 9-8-2000 when his services have been verbally disengaged and that to without issuing any notice, as contemplated under Section 25-F of the Industrial Dispute Act (hereinafter referred to as the Act). The petitioner had rendered more than 240 days of continuous service in the preceding 12 months of his disengagement. His disengagement is in violation of the provisions of Section 25-F and was thus illegal.

3. It is also contended by the petitioner that the persons junior to him had been retained by the respondent and fresh hands had been engaged after his disengagement and as such the action of the respondent was also violative of the provisions of Section 25-G and 25-H of the Act.

4. It is further averred by the petitioner that though he was engaged a labourer but the work of a typist was taken from him by the respondent. The petitioner had thus preferred an Original Application No. 1223/97, seeking difference in the wages on the basis on the principle of 'equal pay for equal work'. The said application was allowed by the Hon'ble Administrative Tribunal and the petitioner thus deserves to be reengaged as a typist against a vacant post or in the alternative he be again engaged as a labourer/beldar. The petitioner thus seeks his reengagement with all consequential benefit.

5. While contesting the claim the respondents have inter alia raised preliminary objections vis-à-vis maintainability, limitation, nonjoinder of necessary parties. It is further averred by the respondent that the petitioner has not approached this Court with cleans hands and as such he is not entitled to the relief claimed by him. Per the respondent the petitioner was engaged as a daily waged beldar in 1992. He worked as such with the respondent till the year 2000 and after that he had abandoned the job of his own.

6. On merits it is the case of the respondent that the petitioner was engaged as a seasonal labourer by the Agriculture Development w.e.f. Sept., 1992 to August, 2000 under different muster-rolls. After August 2000 the petitioner had remained willfully absent and that too without any leave or intimation to the department. The petitioner had thus abandoned job of his own sweet will. It is denied that the services of the petitioner was disengaged. Per the respondent he had left the job of his own. It is admitted that the Hon'ble Tribunal had ordered the respondent to pay salary of a lower scale typist to the petitioner and consequently an amount of Rs. 83,479/- had been paid to the petitioner. It is denied that persons junior to the petitioner had been retained or fresh hand had been engaged by the respondent after disengagement of the petitioner. The respondents thus pray for the dismissal of the reference.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. I notice that on 29-10-2007 the following issues came to be framed by my Ld. predecessor.

1. Whether the disengagement from service of the claimant by the respondent is proper and justify?
... OPP.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to?
... OPR.
3. Whether the petition is bad for non-joinder of the parties?
..OPR.

4. Whether the petition is not maintainable before this Court being time barred?

... OPR.

5. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : No

Issue No.2 : As per operative part of the award.

Issue No.3 : No

Issue No.4 : No

Relief : Allowed partly, as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1 & 2

10. Both the issues are being discussed together as they are correlated and intermingled.

11. The present dispute pertains to the disengagement of the petitioner w.e.f. 9-8-2000. Admittedly prior to the disengagement of the petitioner he had approached the Hon'ble Administrative Tribunal for grant of wages of a typist on the principle of 'equal pay for equal work' which already stands released to the petitioner, as per order passed by the said Tribunal.

12. It seems during the pendency to the original application No. 1223/1997 the services of the petitioner came to be dispensed with on 9-8-2000. It is the case of the petitioner that oblivious of having completed 240 days his services came to be dispensed with without any notice, so contemplated under Section 25-F of the Act.

13. The respondents have on the other hand canvassed that since the petitioner had willfully left service and no orders had been passed by the respondent and as such his disengagement cannot be said to be against the provisions of the Act.

14. It is specifically pleaded by the respondent that since the petitioner left and abandoned the job on his own and started business and as such he was not entitled to any notice or compensation as per the Act.

15. Further per the respondent, the petitioner remained absent from duty w.e.f. August, 2000 and that too without any leave or intimation to the respondent.

16. Sh. Kulbir Singh Rana, B.D.O. Bharmour while appearing as RW1 has also deposed on the same line. Per him, as per the record the petitioner had worked as a seasonal labourer with the Department since 1992. He worked as such with the respondent till the August, 2000. Thereafter he had left the job of his own to start his business. The petitioner had not informed the respondent about his absence nor submitted any medical certificate to the respondent.

17. He had admitted in his cross-examination that a letter dated 26-9-2000 bears the signature of B.D.O. Bharmour. He has feigned ignorance that the said letter was issued by his office. He has deposed that no show cause notice was issued to the petitioner regarding his willful absence and nor any retrenchment compensation was given to him. Per him too the petitioner had left job of his own. He has admitted that the petitioner worked as a typist in the office of the B.D.O. from 1992 till the year 2000. He has however, further hastened to add that a muster-roll of a labourer was issued to him.

18. Though the respondents have specifically pleaded and tried to prove that the petitioner had abandoned job but the documents on record more particularly letter dated 9-8-2000 and 26-9-2000 show that the service of the petitioner was dispensed with by the respondent. Both the letters show that the petitioner had been directed not to come to work after 9-8-2000. Even otherwise, by now it is well settled that abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. It has thus to be inferred that the petitioner had not abandoned the job.

19. Apart from bald statement of RW1 i.e. B.D.O. there is no contemporaneous record to show that the petitioner had abandoned the job. Rather the contemporaneous documentary record i.e. letter dated 9-8-2000 and 26-9-2000 clearly shows that the services of the petitioner was disposed off. It has thus to be inferred that the services of the petitioner was disengaged. I am goaded to take this view, more particularly keeping in view the observation of the Hon'ble Administrative Tribunal in O.A. No. 1223/1997 dated 9th July, 2004 where in it has been specifically recorded by the Hon'ble Tribunal that the petitioner during the course of arguments had produced on original letter dated 9-8-2000 whereby the services of the petitioner had been terminated by the respondent during the pendency of the said O.A. All these facts conclusively show that the services of the petitioner in fact had been disengaged. Admittedly no notice had been issued to the petitioner. The disengagement of the petitioner is in violation of the provision of Section 25-F and thus is illegal and unlawful.

20. The respondents however, during the course of proceedings in this court have urged that the petitioner had preferred a miscellaneous application No. 453/2000 in O.A. No. 1223/97 whereby he had challenged his disengagement and as such he is now estopped from filing the present reference. In this behalf the respondents have also placed the copy of the M.A. No. 453/2000 and the copy of the notice so received by the respondent.

21. No doubt the perusal of the M.A. (annexure RW1) this show that the petitioner had challenged his disengagement so made on 8-9-2000. However, the perusal of the order dated 29th July 2004 shows that the aforesaid M.A. had not been decided by the Hon'ble Tribunal. The Hon'ble Tribunal only disposed off the claim of the petitioner vis-à-vis the wages of typist, so claimed by him alone. Though the respondent would contend that since the petitioner had filed an M.A. challenging his disengagement, he is now estopped from raising the present reference. But the said arguments of the respondent is not sustainable as admittedly the issue in hand had not been heard and finally decided by the said Tribunal. No doubt it has been raised by the petitioner, but admittedly has not been heard and finally decided by the said Tribunal. Even otherwise there is a distinction between issue estoppel and res-judicata. The issue so raised by the petitioner had not attained finality for it had not been determined earlier by the authority concerned. In fact the respondents have not even filed the reply to the said M.A. Thus it cannot be said that the present reference is barred either by way of res-judicata or because of the same even an estoppel by accord would ensue. The objection so raised by the respondent is thus is not sustainable in the fact and circumstances of the present case.

22. It is thus clear that the disengagement of the petitioner is violative of the provisions of Section 25-F and as such is bad in the eyes of law. Consequently it is set-aside. The respondents are directed to reengage the petitioner. The petitioner shall be engaged as a daily waged beldar/labourer, as he was engaged earlier. Seeing to the peculiar circumstances of the case discussed above he shall not be entitled any backwages, he shall be entitled to seniority and continuity from the date of his illegal disengagement. Backwages are not being awarded in favour

of the petitioner as he had already been paid the wages of a typist when he worked as such with the respondent. Thereafter has not gainfully assisted the respondents even in the office. The issues are thus decided accordingly, partly in favour of the petitioner and against the respondent.

Issue No. 3.

23. Nothing has been urged nor any thing has been brought to my notice as to how the petitioner is bad for non-joinder of necessary parties. It is otherwise admitted case of the respondent that the petitioner had been working in the office of the B.D.O. right from the year 1992 till 2000. It is not only corroborated by the order passed earlier by the Hon'ble Administrative Tribunal but also admitted by the B.D.O. while appearing as RW1. The issue is accordingly decided against the respondent.

Issue No. 4

24. The petitioner had been disengaged on 9-8-2000. The failure report in pursuance to the dispute so raised by the respondent had been sent by the Labour Officer to the appropriate Govt. on 9-12-2003. Apparently some time might have elapsed during the conciliation proceedings. It cannot thus be said that the petitioner had slept over his right or the dispute was stale in nature. Though the provisions of the Limitation Act are not strictly applicable to the provision of the Act but none-the-less it cannot be said that the reference suffers from the vice of delay and laches. The issue is thus decided against the respondent.

RELIEF

25. For all the aforesaid reasons discussed above the reference is partly decided in favour of the petitioner. Consequently, the respondents are directed to reengage the petitioner forthwith. The petitioner shall be engaged as a daily waged beldar/ labourer as he was engaged earlier. Seeing to the peculiar circumstances of the case discussed above he shall not be entitled any backwages. The petitioner shall however be entitled to seniority and continuity from the date of his illegal disengagement. The reference is decided in the aforesaid terms. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 19th day of Nov., 2011.

KR. CHIRAG BHANU SINGH,
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.*

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 419/2009

Date of Institution : 28.8.2009

Date of decision : 25.11.2011

Smt. Shouni Devi W/o Shri Mani Ram, R/o Village & P.O. Hillor, Tehsil Pangi, Distt.
Chamba, H.P.

...Petitioner

Versus

The Executive Engineer, I&PH Division Pangi at Killar, District Chamba, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Gaurav Sharma, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Shouni Devi W/o Shri Mani Ram by The Executive Engineer, I&PH Division Killar, Distt. Chamba, H.P., w.e.f. Year, 2005 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that she was appointed as a beldar by the respondent in the year 1999 in HPPWD Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. Thereafter she worked continuously and uninterruptedly till the year 2005, when her services were terminated without any reason, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas her services were disengaged.

4. The petitioner thus contends that her termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of her termination.

5. The petitioner thus seeks her re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections vis-à-vis maintainability and she was engaged in the year 1999 and worked as such upto 2005.

7. On merits it is the case of the respondent that the petitioner had abandoned her job and thereby also lost her seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 15.7.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. year, 2005 is violative of the provisions of Section 25-F, & 25-G of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to?

..OPP

2. Whether the petition is not maintainable, as alleged. If so, its effect thereto.

.. OPR

3. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes

Issue No.2 : No

Relief : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating her services. Per contra it is the case of the respondent that the petitioner had herself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had herself abandoned job in October, 2005. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as her own witness has deposed that some of juniors to her were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, she was entitled to the protection of provisions of Section 25-G of the Act and the respondents were duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as State of H.P. vs. Prem Lal 2010 (3) Him. LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford herself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of

Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. She is ordered to be re-engaged forthwith. She shall be entitled to seniority and continuity from the date of her illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

ISSUE NO. 2

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

15. For the foregoing reasons discussed hereinabove, the reference is allowed. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of her illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 61/2010

Date of Institution : 23.4.2010

Date of decision : 21.01.2012

Shri Sunil Kumar S/o Shri Paras Ram, R/o Village Farokta, P.O. Bathri, Tehsil Dalhousie, Distt. Chamba, H.P.

...Petitioner

Versus

The Executive Officer, Municipal Council, Dalhousie, Distt. Chamba, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. M.G. Sharma, Adv.

For the Respondent :

Sh. Rahul Sharma, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Sunil Kumar S/o Sh. Paras Ram, daily wage workman by The Executive Officer, Municipal Council, Dalhousie, Distt.Chamba, H.P. w.e.f. 13.6.2002 vide notice dated 14.5.2002 on the plea of non-availability of work and funds, whereas worker claims that plenty of work is available, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the above employer?”

2. In furtherance to the reference it is pleaded by the petitioner in the statement of claim that he was engaged as a beldar on daily wages in July, 1999. The petitioner continued working as such till his disengagement on 13.5.2002. The respondent vide a notice dated 14.5.2002 had dispensed with his services w.e.f. 13.6.2002. As per the petitioner even while issuing notice to the petitioner no retrenchment compensation had been paid to him and as such the alleged notice is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is further averred by the petitioner that after his disengagement he had approached the Hon'ble Administrative Tribunal by filing an original application which was disposed of with the directions that the petitioner shall be considered for re-engagement subject to availability of work and funds, vide an order dated 27.6.2003. Since the respondent had raised the ground of jurisdiction before the Hon'ble Administrative Tribunal the petitioner has preferred the present reference.

3. It is also averred by the petitioner that after his disengagement the respondents have indulged in unfair labour practices as the work which was available with the respondent was got executed through contractors, resulting in denial of re-engagement to the petitioner. In spite of availability of work and funds with the respondents the petitioner has requested the respondent to re-engage him but to no avail. The petitioner had completed more than 240 days in the preceding 12 months of his disengagement and as such his disengagement is violative of the provisions of Section 25-F, 25-G and 25-H of the Act.

4. The petitioner thus prays for his re-engagement with all consequential benefits.

5. While contesting the claim the respondent has inter alia raised the preliminary objections vis-à-vis maintainability, cause of action, limitation, non joinder of necessary parties. It is also averred by the respondent that the right of the employer to get the work executed departmentally or through a contractor cannot be a subject matter of reference and the replying respondent shall consider the case for reengagement as and when departmentally work becomes available.

6. On merits it is the case of the respondent that the petitioner was engaged on 12.5.1999 but for performing for casual and intermittent work only. It is further averred by the respondent that the termination of the petitioner on account of completion of casual work and non availability of work which was required to be executed through departmental labour is not retrenchment. The services of the petitioner by way of notice dated 14.5.2002 with the directions to the petitioner to collect the retrenchment compensation on 17.6.2002 which is fair, just and legal. The petitioner had himself failed to receive the retrenchment compensation.

7. It is also averred by the respondent that the right and discretion of an employer, as to how and in which manner and from whom the developmental works are to be got executed cannot be restricted under any law as to compel an employer to get the developmental works executed through departmental labour only. Thus the claim of re-engagement is without merit and the petitioner is not entitled to any relief. The respondent thus prays for the dismissal of the claim.

8. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

9. On 28.5.2011 the following issues had come to be framed by this Court:

1. Whether the termination of the petitioner w.e.f. 13.6.2002 is violative of the provisions of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to?
..OPP
2. Whether the reference is not maintainable, as alleged. If so, what effect?
..OPR
3. Whether the reference is hit by the vice of delay and laches, as alleged. If so, to what effect?
..OPR
4. Relief.

10. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief : Allowed partly as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

11. It is not denied that the petitioner had initially come to be engaged on 1.7.1999. It is however the case of the respondent that the petitioner was engaged for casual and intermittent work only. The seniority list of the daily waged staff annexed along with as Mark A also reflects the mandays of the petitioner. As per the mandays on record the petitioner has worked continuously and uninterruptedly right from May, 1999 till his disengagement w.e.f. 13.6.2002. The contention of the respondent that the petitioner was engaged for casual and intermittent work is thus belied by the mandays on record.

12. No doubt a notice was issued to the petitioner vide Ex. RW1/A. The respondent did issue one month's notice to the petitioner as per the requirement of Section 25-F but the respondent had been directed to receive his retrenchment compensation if any from the office on 17.6.2002. No retrenchment compensation had been quantified but in generalized terms the petitioner had been asked to collect his retrenchment compensation if any on 17.6.2002.

13. Para Section 25-F of the Act reads thus:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. It is clear from the reading of the Section that the requirement prescribed in Sub Section (a) and (b) is a condition precedent to retrenchment and failure to comply the same would render the impugned retrenchment invalid and inoperative. The provisions of sub section (a) and (b) are to precede the retrenchment and not to follow it. In *National Iron and Steel Company Ltd. vs. State of West Bengal*, (1967)II LLJ 23 (SC). The Hon’ble Supreme Court in a similar situation, where a notice dated 15th November, 1958 was issued to the workmen terminating the services of the workmen w.e.f. November 17, and directed him to collect one month’s notice in lieu of notice on November 20 or thereafter had held manifestly the provisions of Section 25-F had not been complied with. The same happens to be the situation in the present case. This has obviously been done in the present case too, and therefore, the condition precedent for the retrenchment as envisaged under Section 25-F of the Act has not been fulfilled and this certainly invalidates the order of retrenchment itself. Clause (a) and (b) of Section 25-F are obligatory and create a condition precedent to retrenchment. Therefore, if retrenchment compensation is not paid before the workmen are asked to go, retrenchment order would be bad in law and invalid. Moreover the tender of compensation in order to be valid under Section 25-F should be of the precise amount and should be made simultaneously with the termination of the service. The fact that the employer wrote to the workmen to clear his account in the office will not amount to an offer of retrenchment compensation at the time of terminating his services. In this behalf support can be drawn from the judgment of the Hon’ble Punjab and Haryana High Court titled as *Kailash vs. Labour Court* (1998)III LLJ (Supp) 4 and a judgment of the Hon’ble Bombay High Court titled as *Managing Director, Bombay Film Laboratory Ltd. vs. L.G. Vasule* [(1998)I LLJ 208 (Bom)].

15. It has thus to be held that the impugned retrenchment is invalid and inoperative in the eyes of law.

16. Though the respondents have categorically averred that it is sole prerogative of the employer to as to how and in which manner and from whom the developmental works are to be got executed but no evidence has been led to remotely show that after the year 2002 all the works were got executed through contractual labour. The mandays and seniority list of the daily waged worker show that all the workmen were working continuously and uninterruptedly. They were neither casual or intermittent workers. Nor was the petitioner. No evidence has been led to remotely show that the respondents have no work and funds after the year 2002.

17. Even assuming the pleaded case of the respondent, that it is the sole prerogative of the respondent to get work executed by a contractor or departmentally is to be appreciated, suffice it to say that respondent has misconstrued the provisions of law, at least vis-à-vis the protection envisaged by the Industrial Disputes Act. As per the Vth schedule to abolish the work of a regular nature being done by workman, to give such work to contractors may also amount to an “unfair labour practice”. However, as discussed hereinabove supra the said fact has been pleaded but not been proved by the respondent.

18. For all the foregoing reasons discussed above it is held that the retrenchment of the petitioner is invalid and inoperative in the eyes of law. Consequently the retrenchment of the petitioner is set aside and quashed. As a sequel thereto the petitioner is directed to be re-engaged. He shall be entitled to seniority and continuity from the date of his illegal disengagement. Seeing to the peculiar circumstances on record and more particularly the fact that the petitioner has not worked during the said interregnum with the respondent he shall not be entitled to any back wages. The issue is decided accordingly.

ISSUE NO. 2

19. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the relief the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE NO. 3

20. No doubt the petitioner was terminated in the year, 2000 and the failure report was submitted by the conciliation officer on 8.6.2009. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

21. For all the aforesaid reasons discussed above the reference is allowed partly. The disengagement of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal disengagement, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 21st day of January, 2012.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H. P.**

Ref No. : 190/2010

Date of Institution : 31.5.2010

Date of decision : 25.11.2011

Smt. Sunni Devi W/o Shri Shri Amar Nath, R/o Village Kawas, P.O. Killar, Tehsil Pangi,
Distt. Chamba, H.P. ...Petitioner

Versus

The Executive Engineer, HPPWD Division Killar, District Chamba, H.P. . .Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Gaurav Sharma, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Sunni Devi W/o Shri Amar Nath by The Executive Engineer, HPPWD Division Killar, Distt. Chamba, (H.P.), w.e.f. Year, 2005 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that she was appointed as a beldar by the respondent in the year 1996 in HPPWD Division Pangi at Killar, Tehsil Pangi, District Chamba, H.P. Thereafter she worked continuously and uninterruptedly till the year 2005, when her services were terminated without any reason, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas her services were disengaged. To name a few, the petitioner has named her juniors as Karan Singh and Surinder.

4. The petitioner thus contends that her termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of her termination.

5. The petitioner thus seeks her re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections vis-à-vis maintainability, estoppel and the reference being hit by the vice of delay and laches.

7. On merits it is the case of the respondent that the petitioner had been continued till the year 2004 and thereafter the petitioner had abandoned her job and thereby also lost her seniority in

this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 15.7.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. year, 2005 is violative in the provisions of Section 25-F, & 25-G of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto. . .OPR
3. Whether the petition suffers from the vice of delay and laches, as alleged. If so, its effect thereto. . . OPR
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 :	Yes
Issue No.2 :	No
Issue No.3 :	No
Relief. :	Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1:

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating her services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in September, 2004. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as her own witness has deposed that one Karan Singh and Surinder Singh who were juniors to her were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to

dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, she was entitled to the protection of provisions of Section 25-G of the Act and the respondents was duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as State of H.P. vs. Prem Lal 2010 (3) Him.LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. She is ordered to be re-engaged forthwith. She shall be entitled to seniority and continuity from the date of her illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

ISSUE NO. 2 :

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE NO. 3 :

15. No doubt the petitioner was terminated in the year 2005 and the failure report was submitted by the conciliation officer on 4.9.2008. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the

principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years....."

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF :

16. For the foregoing reasons discussed hereinabove, the reference is allowed. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of her illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 64/2008

Date of Institution : 22.2.2008

Date of decision : 30.11.2011

Shri Suresh Kumar S/o Shri Jai Ram, R/o Village & P.O. Gopalpur, Tehsil Palampur, Distt. Kangra, H.P.Petitioner

Versus

The Conservator of Forests, Working Plan Division Dharamshala, Distt. Kangra, H.P. ...Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Shri N.L. Kaundal, AR
Shri Vijay Kaundal, Adv.

For the Respondents : Shri Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of services of Shri Suresh Kumar S/o Shri Jai Ram, VPO Gopalpur, Tehsil Palampur, District Kangra, H.P. w.e.f. 22.12.2000 by the Divisional

Forest Officer, Working Plan Division Dharamshala, Distt. Kangra, H.P. without complying the provisions of Industrial Disputes Act, 1947, is legal and justified? If not, what relief of service benefits, seniority, back wages and other consequential benefits the workman concerned is entitled to?"

2. In pursuance to the reference it is averred by the petitioner that he was engaged by the respondent as a daily waged worker in February, 1997 and he worked under the control of DFO, Working Plan Division Dharamshala upto 15.5.1999. Thereupon his services were disengaged. The petitioner was constrained to file an O.A. No. (D) 325/99 before the Hon'ble Administrative Tribunal and on the basis an order dated 24.3.2000 the petitioner came to be re-engaged by the respondent. The petitioner was again disengaged by the respondents in the month of June/July, 2000. Again O.A. No. (D) 495/2000 came to be filed by the petitioner and by virtue of an order passed by the said Tribunal the petitioner was again re-engaged on 9.11.2000. He thereafter worked till 22.12.2000 when his services were again dispensed with. The petitioner again filed an original application bearing O. A. No. (D) 554/2001. The disengagement of the petitioner (16.11.1999, June/July, 2000 and 22.12.2000) is stated to be illegal, unjust and arbitrary as no notice or charge-sheet had been served upon the petitioner and nor any retrenchment compensation had been paid to him as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. It is further stated by the petitioner that he had completed 240 days continuous service and as such the infraction of the provisions of Section 25-F renders his disengagement null and void.

4. It is further the case of the petitioner that one similar person Shri Kashmir Singh who had been working with the petitioner in the same Division at Dharamshala had also been terminated by the respondent. He too, had filed an O.A. No. (D) 106/2001 and had come to be reinstated by the respondent. He is still working with them. It is also averred by the petitioner that the respondents have retained persons junior to him in service and have also engaged fresh hands after his termination and as such the action of the respondent is also violative of the provisions of Section 25-G and 25-H of the Act.

5. Further, per the petitioner his original application No. 554/2001 had been dismissed on 13.10.2004 on the grounds of jurisdiction, with liberty to the petitioner to approach the competent forum and hence the present reference.

6. The petitioner thus prays for his re-engagement with all consequential benefits.

7. While contesting the claim the respondents have inter alia raised preliminary objections vis-à-vis maintainability and suppression of material facts.

8. On merits it is the case of the respondents that the services of the petitioner was disengaged on 22.12.2000 by giving one month's notice as contemplated under Section 25-F of the Act along with the retrenchment compensation, but the petitioner had refused to accept the same. The respondents have annexed along with copy of the notice and the refusal thereto. Further, per the respondents, the petitioner had not completed 240 days in the preceding 12 months of his disengagement.

9. In respect of Kashmir Singh it is averred by the respondent that he was engaged on 27.12.1996 and had completed 240 days continuously for 10 years starting from 1997 to 2006. He was regularized in the year 2006 subject to the policy of the State.

10. It is further averred by the respondents that the services of the petitioner was disengaged on 22.12.2000 when the working plan division was wound up, after following the

proper procedure, as per the Act. It is further submitted by the respondent that the work pertaining to a Working Plan Division are temporary and are in progress only till the preparation of the working plan. The preparation of Dharamshala Working Plan was completed during May, 2001, which necessitated the disengagement of the petitioner.

11. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

12. I notice that on 3.6.2008 the following issues had been framed by my Ld. Predecessor:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits the petitioner is entitled to? OPR
2. Whether the petitioner was engaged on daily wages for a time being/short span works, if so, to what effect? .OPR
3. Whether the petition is not maintainable. .OPR
4. Relief.

13. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Partly yes

Issue No.2 : No

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Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2 :

14. Both the issues are being taken up together for discussion as they are correlated and intermingled.

15. The simple case set up by the petitioner is that his disengagement w.e.f. 22.12.2000 was illegal and unlawful as no notice had been served to the petitioner, as contemplated under Section 25-F of the Act and neither any charge sheet had been served on him and nor any inquiry conducted against him before disengaging him. It is also sought to be portrayed that persons junior to the petitioner had been retained and even fresh hands have been engaged after his disengagement and as such the action of the respondent is violative of the provisions of Section 25-G and 25-H of the Act.

16. Per contra, the respondents are stated to have issued retrenchment notice under Section 25-F of the Act on 27.5.2000 doing away with the services of the petitioner w.e.f. 28.6.2000. Over and apart it is the specific contention of the respondents that the services of the petitioner was terminated on 22.12.2000 when the working plan division had been wound up and proper procedure under the Act had been resorted to while disengaging the services of the petitioner. The respondents have further averred that though the petitioner had not completed 240 days in the preceding 12 months of his disengagement, yet a notice was issued to him. The work pertaining to the work plan divisions are stated to be temporary in nature and remained in existence only till the preparation of the working plans of the concerned division.

17. The retrenchment notice Ex. RW1/B issued on 27.5.2000 reflects that since the working plan has been submitted the division was being closed and as such the services of the

petitioner would no longer be required. The Chief Conservator of Forest Working Plan and Settlement, Mandi who has appeared as RW1 has also deposed on the same lines. The said was issued on 27.5.2000, whereas the disengagement pertains to December, 2000. Ex. RW-1/B thus cannot be said to be the notice dispensing the services of the petitioner. Even otherwise, as per the notice no retrenchment compensation had been paid to the petitioner.

18. The fact does emerges from the evidence on record is that the disengagement of the petitioner was necessitated because of the wounding up of the working plan division. More particularly, as the working plan had been submitted by the respondent. The respondent thus was very much within its right to have exercise the option contemplated by Section 25-F of the Act but the respondents had failed to issue retrenchment notice to the petitioner, as has been held hereinabove, supra.

19. The Ld. Authorized Representative of the petitioner has further strenuously argued that the respondents had retained persons junior to him and also engaged fresh hands after the disengagement of the petitioner and as such the action of the respondent is violative of the provisions of Section 25-G and 25-H of the Act. In this behalf much stress has been laid on Ex. D1 which is a seniority list of workmen prepared by the respondent. The Chief Conservator of Forest Shri Chandresh Sharma while appearing as RW1 has admitted that Ex. D1 has been prepared by the department. The witness has further admitted that Sunder Singh reflected at serial No.1 was working with the respondent on 22.12.2000 and even one Tek Singh reflected at serial no.3 was engaged on 18.11.2002 and the said workmen is still working with the respondent. He has also admitted that when Tek Singh was engaged no notice was issued to the petitioner for re-engagement. The witness has further tried to portray that the workmen reflected in Ex. D1 were posted in Kangra Division. However, the witness has deposed that Ex. D1 is a seniority list pertaining to the Dharamshala Working Plan Division. He has also admitted that Kashmir Singh was initially engaged at Dharamshala and is presently working at Shimla. The mandays of Kashmir Singh has also been placed on record vide Ex. RW1/F.

20. As per the evidence on record Kashmir Singh was engaged in 1996 and he has continuously worked (with 240 days in each calendar year till the year 2006).

21. No doubt, since the working plan had been submitted the respondents were within there right to have retrenched the services of the petitioner, but the same was liable to be done strictly on the principle of 'last come first go', as envisaged under Section 25-G of the Act. The Chief Conservator of Forest, while appearing as RW1 has admitted that Ex. D1 pertains to the entire Dharamshala working plan division. If that was so, it clearly emerges from the seniority list that Sunder Singh was junior to the petitioner as he was engaged for the first time on 18.11.1998 while one Tek Singh had been engaged for the first time on 18.11.2002. If that was so the action of the respondents in disengaging the services of the petitioner was not strictly in compliance with the principle of 'last come first go' and nor the provisions of Section 25-H had been followed while engaging fresh hands. Both the provisions are mandatory in nature. The non compliance of mandatory provisions of the Act is thus fatal to the respondent. Not only this by now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can ably be drawn by the judgments of the Hon'ble Supreme Court in Central Bank of India vs. S. Satayam, 1996 (5) SCC 419 and Harjinder Singh vs. Punjab State Ware House Corporation, 2010 (3) SCC 192 and our own Hon'ble High Court in State of H.P. vs. Prem Lal 2010 (3) Him LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No. 3887/2011 decided on 3.6.2011). To this limited extent the disengagement of the petitioner is illegal. So is the non-issuance of notice under Section 25-F fatal to the case of the respondent.

22. The respondent while disengaging the petitioner has not followed the principle of 'last come first go'. Even if the working plan had been submitted the petitioner based on his seniority should have been offered employment in some other part of the working plan division. This gains significance because even as per RW1 the seniority list of workmen is maintained at divisional level. The respondents were duty bound to have maintained the divisional level seniority list and thereupon resorted to retrenchment strictly on the basis of the seniority. A bare glance at Ex. D1 shows that such procedure was not followed by the respondent. To this limited extent the disengagement of the petitioner is bad, being violative of the provisions of the Section 25-G and 25-H of the Act. Consequently the action of the respondents is set aside. The petitioner is directed to re-engage forthwith. Seeing to the peculiar circumstances of the fact discussed hereinabove the petitioner shall not be entitled to any back wages, more particularly since the working plan vis-à-vis Dharamshala had already been submitted and thereupon the petitioner otherwise had to be stationed at some other place in the division. The issue is accordingly decided partly in favour of the petitioner and against the respondent.

ISSUE No. 3 :

23. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have a vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

RELIEF :

24. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall not be entitled to back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today the 30th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 23/2010

Date of Institution : 26.2.2010

Date of decision : 28.11.2011

Shri Suresh Kumar S/o Shri Khazan Singh, R/o Village Sari, P.O. Molag, Tehsil
Jaisinghpur, District Kangra, H.P. *...Petitioner.*

Versus

The Executive Engineer, HPPWD, Division, Baijnath, District Kangra, H.P.

..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR.

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether giving fictional breaks in service to Shri Suresh Kumar S/o Shri Khazan Singh workman during his service period on 16th day of every month’s w.e.f. Year, 1998 by the Executive Engineer, H.P.P.W.D. Division Baijnath, District Kangra, H.P., whereas similar persons who joined the duties along with the workman engaged continued without following the principal of ‘Last Come First Go’ as alleged by the workman is proper and justified? If not, what relief of back wages, seniority and service benefits the above aggrieved workman is entitled from the above employer?”

2. In pursuance to the reference the petitioner has averred in the statement of claim that he had been engaged by the respondent on muster roll basis in May, 1998 and he had worked continuously upto September 30, 2007. Per the petitioner the respondent had engaged him w.e.f. May, 1998 but a muster roll only for 15 days in a month was issued to him. It is further averred by the petitioner that his services had been disengaged on 16th day of every month by the Assistant Engineer Sub Division Jaisinghpur from time to time till September, 2007.

3. It is further averred that certain juniors like Pink Raj, Anil Kumar, Narain DAss, Harbans Lal, Kudan Lal, Smt. Kalna Devi, Tilak Raj and Vinod Kumar etc. have been engaged by the respondent in the years 1999, 2001, 2002, 2003, 2004, 2006 and 2007, who were allowed to continue with the respondent uninterruptedly. It is further averred by the petitioners that the respondent had not followed the provisions of section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is further averred by the petitioner that the respondent had engaged 65 five workmen on daily waged basis. It is further averred by the petitioner that the act of the respondent to give artificial breaks from time to time is highly unjustified, arbitrary and unconstitutional and against the provisions of the Act.

4. The petitioner thus pray that the respondent be directed not to give breaks to the petitioner and condone this period. The break period be counted towards seniority and the respondent be directed to pay the back wages to the petitioner.

5. While contesting the claim the respondents have raised the preliminary objections that the present petition is not maintainable and the claim of the petitioner is bad on account of delay and laches.

6. On merits it is submitted that the petitioner had been engaged as per availability of work and funds with the department and that too on his own verbal request. The respondent further averred that the petitioner was engaged as a daily waged beldar on muster roll basis in the year 1998. It is further averred by the respondent that the workmen mentioned in the statement of claim were engaged against the work which was to be executed regularly. It is further averred by the respondent that the petitioner was engaged subject to availability of work and funds and the respondent had never violated the principle of ‘last come first go. It is however averred by the respondent that the petitioner had been working continuously and the respondent had never dispensed with the services of the petitioner. The respondent thus prays for the dismissal of the claim.

7. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

8. On 15.2.2011 the following issues had come to be framed by this Court:

1. Whether the action of the respondent in granting fictional breaks of the petitioner after 16th day of every months w.e.f. 1998 is illegal, arbitrary and against an act of unfair labour practice, as per the provision of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. If so to what effect? ..OPR.
3. Whether the reference is hit by the vice of delay and laches, as alleged. If so, to what effect? ..OPR.
4. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief. : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

10. The short and simple case of the petitioner is that the respondent had been resorting to giving fictional breaks to the workmen including the petitioner from the very inception as only muster-rolls for 15 days were issued to the workmen.

11. In this behalf the petitioner has examined himself as PW1. He has deposed that the respondent had employed him since 1998 on muster rolls, but they were issued only for 15 days. The said process continued till Sept., 2007.

12. The respondent on the other hand has examined the Executive Engineer Sh. S.V. Sharma, as RW1. He has placed on record the mandays chart of the petitioner vide Ex. RW1/E. In his cross-examination he has admitted that the aforesaid workmen were only appointed for 15 days. As per him they were appointed only for 15-20 days in a month. He has further admitted that this process continued from 1998 to till 2007. It is not in one odd case, but in the case of all the workmen that such procedure had been adopted by the respondent. Why, how and under what circumstances the muster-rolls was issued only for 15-20 days to all the workmen has not been spelt out by the respondent either in their pleadings or in their evidence. It is the version of the respondent that till September 2007 muster-rolls for only 15-20 days were issued to the workmen for want of word and funds. There is no such evidence on record to substantiate the plea of the respondents.

13. On the other hand the seniority list Ex.RW1/B shows that the workmen Anil Kumar, Narain Dass and Harbans Lal were engaged in 2001 and since then they were being offered muster-

rolls for a full month. Admittedly even these workmen are employed in Sub-Division Jaisinghpur. The Executive Engineer while appearing as RW1 has admitted that the mandays has been issued by his Assistant Engineer. Why the petitioner who was admittedly senior to the aforesaid workmen were not granted the muster-rolls for the entire months has neither been explained nor their seems to be any plausible reasons for the same. After September 2007 the respondent themselves started giving muster-roll for the entire month to the workmen. They all continued working uninterruptedly but for only 15 days in a month right from the inception till the year 2007. Certain similar situated persons however continued to be granted muster-rolls for the entire month. The respondent was either resorting to favouritism or acting in a partisan manner to one set of workmen or was simply resorting to such process with an object of depriving them of the status and privileges of a permanent workmen, entitling them to regularization, as per the policy of the State. It is an act of gross discrimination which is ex facie borne out from the record. There can be no two opinions about it. Mere glance at the record highlights the glaring discrepancy and discrimination perpetuated by the respondents.

14. The aforesaid action of the respondent as discussed above is not only an “unfair labour” practice as per the provision of Section 2 (r.a.), but is also against the provision of the 25-B of the act, which inter alia stipulates that the workmen shall be in continuous service”, except because of an interruption on account of sickness authorized leave, accident, strike which is illegal or lock out and the cessation of work which is not due to any fault on the part of the workmen. The action of the respondent in not intentionally issuing muster-roll for the entire month to the workmen was not due to any fault of the workmen. The cessation of work was caused due to the arbitrary, discriminatory attitude of the respondent. Thus it has to be presumed that the workmen were in “continuous service”. The petitioner continued serving uninterruptedly with the respondent from the date of his engagement. The sole inference which can be drawn from the entire circumstances discussed above is that the action of the respondent in giving fictional breaks to the workmen and in the process disengaging them after 15-16 days every month till the year 2007 was illegal and against the provision of the Industrial Disputes Act.

15. It is thus held that the petitioner was in continuous uninterruptedly service with the respondent from the date of his engagement. The breaks given by the respondent were fictional in nature and it shall have no effect on the seniority and continuity of service, of the petitioner. His seniority shall be reckoned from his initial date of engagement.

ISSUE No. 2

16. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE No. 3

17. No doubt the failure report was submitted by the conciliation officer on 19.11.2008. In between the petitioner had raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence led by the respondent as to how the claim was time barred and not maintainable, the onus of which was heavy on them. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has

been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

18. For all the aforesaid reasons discussed above it is thus held that the petitioner was in continuous uninterrupted service with the respondents from his date of engagement. The breaks given by the respondent were fictional in nature and it shall have no effect on the seniority and continuity of service, of the petitioner. His seniority shall be reckoned from his initial date of engagement. It further goes without saying that the petitioner shall be entitled to regularization from his initial date of engagement, though subject to the policy of the State. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 28th day of November, 2011.

KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 59/2010

Date of Institution : 23.4.2010

Date of decision : 21.01.2012

Shri Susheel Kumar S/o Shri Vyas Dev, R/o VPO Goli, Tehsil Dalhousie, Distt. Chamba,
H.P. *...Petitioner.*

Versus

The Executive Officer, Municipal Council, Dalhousie, Distt. Chamba, H.P.

....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. M.G. Sharma, Adv.

For the Respondent : Sh. Rahul Sharma, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Susjheel Kumar S/o Shri Vyas Dev, by The Executive Officer, Municipal Council, Dalhousie, Distt. Chamba, H.P. w.e.f. 10.7.2002 vide notice dated 10.6.2002 on the plea of nonavailability of work and funds, whereas worker claims that plenty of work is available, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. In furtherance to the reference it is pleaded by the petitioner in the statement of claim that he was engaged as a beldar on daily wages in April/May, 1999. The petitioner continued working as such till his disengagement on 10.7.2002. The respondent vide a notice dated 10.6.2002 had dispensed with his services w.e.f. 10.7.2002. As per the petitioner even while issuing notice to the petitioner no retrenchment compensation had been paid to him and as such the alleged notice is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is further averred by the petitioner that after his disengagement he had approached the Hon'ble Administrative Tribunal by filing an original application which was disposed of with the directions that the petitioner shall be considered for re-engagement subject to availability of work and funds, vide an order dated 27.6.2003. Since the respondent had raised the ground of jurisdiction before the Hon'ble Administrative Tribunal the petitioner has preferred the present reference.

3. It is also averred by the petitioner that after his disengagement the respondents have indulged in unfair labour practices as the work which was available with the respondent was got executed through contractors, resulting in denial of re-engagement to the petitioner. In spite of availability of work and funds with the respondents the petitioner has requested the respondent to re-engage him but to no avail. The petitioner had completed more than 240 days in the preceding 12 months of his disengagement and as such his disengagement is violative of the provisions of Section 25-F, 25-G and 25-H of the Act.

4. The petitioner thus prays for his re-engagement with all consequential benefits.

5. While contesting the claim the respondent has inter alia raised the preliminary objections vis-à-vis maintainability, cause of action, limitation, non joinder of necessary parties. It is also averred by the respondent that the right of the employer to get the work executed departmentally or through a contractor cannot be a subject matter of reference and the replying respondent shall consider the case for reengagement as and when departmentally work becomes available.

6. On merits it is the case of the respondent that the petitioner was engaged on 12.5.1999 but for performing for casual and intermittent work only. It is further averred by the respondent that the termination of the petitioner on account of completion of casual work and non availability of work which was required to be executed through departmental labour is not retrenchment. The services of the petitioner by way of notice dated 10.6.2002 with the directions to the petitioner to collect the retrenchment compensation on 10.6.2002 which is fair, just and legal. The petitioner had himself failed to receive the retrenchment compensation.

7. It is also averred by the respondent that the right and discretion of an employer, as to how and in which manner and from whom the developmental works are to be got executed cannot be restricted under any law as to compel an employer to get the developmental works executed through departmental labour only. Thus the claim of re-engagement is without merit and the petitioner is not entitled to any relief. The respondent thus prays for the dismissal of the claim.

8. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

9. On 28.5.2011 the following issues had come to be framed by this Court:

1. Whether the termination of the petitioner w.e.f. 10.7.2002 is violative of the provisions of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to? ..OPP.
2. Whether the reference is not maintainable, as alleged. If so, what effect? ..OPR.
3. Whether the reference is hit by the vice of delay and laches, as alleged. If so, to what effect? ..OPR.
4. Relief.

10. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes
 Issue No. 2 : No
 Issue No. 3 : No
 Relief. : Allowed partly as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

11. It is not denied that the petitioner had initially come to be engaged in May, 1999. It is however the case of the respondent that the petitioner was engaged for casual and intermittent work only. The seniority list of the daily waged staff annexed along with as Mark A also reflects the mandays of the petitioner. As per the mandays on record the petitioner has worked continuously and uninterruptedly right from May, 1999 till his disengagement w.e.f. 10.7.2002. The contention of the respondent that the petitioner was engaged for casual and intermittent work is thus belied by the mandays on record.

12. No doubt a notice was issued to the petitioner vide Ex. RW1/A. The respondent did issue one month's notice to the petitioner as per the requirement of Section 25-F but the respondent had been directed to receive his retrenchment compensation if any from the office on 10.6.2002. No retrenchment compensation had been quantified but in generalized terms the petitioner had been asked to collect his retrenchment compensation if any on 10.6.2002.

13. Para Section 25-F of the Act reads thus:

“25-F. *Conditions precedent to retrenchment of workmen.*- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. It is clear from the reading of the Section that the requirement prescribed in Sub Section (a) and (b) is a condition precedent to retrenchment and failure to comply the same would render the impugned retrenchment invalid and inoperative. The provisions of sub section (a) and (b) are to precede the retrenchment and not to follow it. In *National Iron and Steel Company Ltd. vs. State of West Bengal*, (1967)II LLJ 23 (SC). The Hon'ble Supreme Court in a similar situation, where a notice dated 15th November, 1958 was issued to the workmen terminating the services of the workmen w.e.f. November 17, and directed him to collect one month's notice in lieu of notice on November 20 or thereafter had held manifestly the provisions of Section 25-F had not been complied with. The same happens to be the situation in the present case. This has obviously been done in the present case too, and therefore, the condition precedent for the retrenchment as envisaged under Section 25-F of the Act has not been fulfilled and this certainly invalidates the order of retrenchment itself. Clause (a) and (b) of Section 25-F are obligatory and create a condition precedent to retrenchment. Therefore, if retrenchment compensation is not paid before the workmen are asked to go, retrenchment order would be bad in law and invalid. Moreover the tender of compensation in order to be valid under Section 25-F should be of the precise amount and should be made simultaneously with the termination of the service. The fact that the employer wrote to the workmen to clear his account in the office will not amount to an offer of retrenchment compensation at the time of terminating his services. In this behalf support can be drawn from the judgment of the Hon'ble Punjab and Haryana High Court titled as *Kailash vs. Labour Court* (1998)III LLJ (Supp) 4 and a judgment of the Hon'ble Bombay High Court titled as *Managing Director, Bombay Film Laboratory Ltd. vs. L.G. Vasule* [(1998)1 LLJ 208 (Bom)].

15. It has thus to be held that the impugned retrenchment is invalid and inoperative in the eyes of law.

16. Though the respondents have categorically averred that it is sole prerogative of the employer to as to how and in which manner and from whom the developmental works are to be got executed but no evidence has been led to remotely show that after the year 2002 all the works were got executed through contractual labour. The mandays and seniority list of the daily waged worker show that all the workmen were working continuously and uninterruptedly. They were neither casual or intermittent workers. Nor was the petitioner. No evidence has to led to remotely show that the respondents have no work and funds after the year 2002.

17. Even assuming the pleaded case of the respondent, that it is the sole prerogative of the respondent to get work executed by a contractor or departmentally is to be appreciated, suffice it to say that respondent has misconstrued the provisions of law, atleast vis-à-vis the protection

envisaged by the Industrial Disputes Act. As per the Vth schedule to abolish the work of a regular nature being done by workman, to give such work to contractors may also amount to an “unfair labour practice”. However, as discussed hereinabove supra the said fact has been pleaded but not been proved by the respondent.

18. For all the foregoing reasons discussed above it is held that the retrenchment of the petitioner is invalid and inoperative in the eyes of law. Consequently the retrenchment of the petitioner is set aside and quashed. As a sequel thereto the petitioner is directed to be re-engaged. He shall be entitled to seniority and continuity from the date of his illegal disengagement. Seeing to the peculiar circumstances on record and more particularly the fact that the petitioner has not worked during the said interregnum with the respondent he shall not be entitled to any back wages. The issue is decided accordingly.

ISSUE No. 2

19. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE No. 3

20. No doubt the petitioner was terminated in the year, 2000 and the failure report was submitted by the conciliation officer on 5.6.2009. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon’ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon’ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram’s case (supra), there was a delay of 12 years. In Ramesh Chand’s case (supra) there was a delay of 9 years. In Mohinder Kumar’s case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

21. For all the aforesaid reasons discussed above the reference is allowed partly. The disengagement of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. The petitioner shall be entitled to continuity and seniority from the date of his illegal disengagement, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 21st day of January, 2012.

(KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
 TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 339/2009

Date of Institution : 23.5.2009

Date of decision : 28.11.2011

Shri Tej Singh S/o Shri Jhabe Ram, R/o Village Babli, P.O. Kunnu, Tehsil Joginder Nagar,
 Distt. Mandi, H.P.

....Petitioner

Versus

The Divisional Manager, HP State Forest Corporation, Forest Working Division, Mandi,
 H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Shri Vijay Kaundal, Adv.

For the Respondents :

Shri Pardeep Parmar, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether action of the employer i.e. The Divisional Manager, HP State Forest Corporation, Forest Working Division, Mandi, H.P. to terminate the services of Sh. Tej Singh S/o Sh. Jhabe Ram w.e.f. 01.4.2006 on account of alleged carelessness and negligence in duty which resulted in a theft of 369 tins of resin from the depot on 28.8.1998 during his duty period, as per departmental inquiry, whereas the Police has filed the case as ‘Untraced’ in the FIR registered, is legal & justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

2. The petitioner avers in the statement of claim that he was engaged as a daily waged Chowkidar by the respondent Corporation on 15.4.1988 in Khaliyar Depot and thereafter he worked at different place continuously till the year 1998 when he was posted at Padhwan depot.

The petitioner was working in the day shift from 9AM to 5 PM on 28.8.1998, when he had reported about theft of some tins from the depot. Consequently an FIR came to be registered regarding the theft of the said resin tins vide FIR No.392/98 dated 9.9.1998. The case came to be registered at Police Station Sadar, Mandi under Section 457 and 380 of the Indian Penal Code and the petitioner had been falsely implicated therein.

3. Eventually the respondent terminated the services of the petitioner after issuing one month's notice vide letter dated 11.9.1998.

4. It is further averred by the petitioner that before terminating his services no show cause notice or charge sheet was issued to him for his alleged misconduct nor any inquiry was conducted by the respondent. The respondent even did not pay any retrenchment compensation to the petitioner, though he had completed 240 days in each calendar year as well as the 12 preceding months of his disengagement. The police after investigation had submitted a cancellation report and no complicity of the petitioner was found by the investigating agency. The petitioner had filed an original application before the Hon'ble Administrative Tribunal and his termination had been stayed vide an order dated 8.10.1998 passed in O.A. No.1915/1998. Thereupon the petitioner continued working uninterruptedly till 31.3.2006, when the original application had been dismissed on the grounds of jurisdiction. Thereupon the services of the petitioner had been disengaged w.e.f. 1.4.2006 and that too without complying the provisions of the Industrial Disputes Act and without holding any inquiry.

5. It is further averred by the petitioner that at the time of his disengagement persons junior to him had been retained namely Subhash Chand, Gian Chand, Sansar Chand etc. and the respondent had also violated the principle of 'last come first go' as envisaged under Section 25-G of the Act. Further, per the petitioner it is who had reported theft of 369 tins to the guard on 29.8.1998 at 9 AM when he reported for duty and only thereafter the department has lodged the FIR on 9.9.1998, after a lapse of about 10 days.

6. It is further the case of the petitioner that while terminating his services no show cause notice was issued to the petitioner nor any opportunity of hearing was offered to him, which is against the principle of natural justice. The petitioner thus prays for his re-engagement with all consequential benefits.

7. While contesting the claim the respondent has raised a preliminary objection that the claim is not maintainable as the petitioner was disengaged for having been found negligent in his duty, resorting in theft and resulting in heavy pecuniary loss to the Corporation. After conducting an inquiry the petitioner was found guilty and hence his services were terminated, in accordance with law.

8. On merits it is not disputed that an FIR was lodged for the theft of 369 tins of resin, but, per the respondent it was due to the negligence of the petitioner and he along with his other colleagues was found guilty and the services of the petitioner and his fellow colleagues were terminated by serving one month's notice to the petitioner and his other colleagues. Further, per the respondent a proper inquiry was conducted and the services of the petitioner was dispensed with in accordance with law applicable to a daily wager.

9. It is admitted that persons junior to the petitioner had been regularized, but only those persons whose service record was good had been regularized. As the petitioner had been negligent in performance of his duties and the same was proved in a departmental inquiry, the petitioner could not be regularized. The respondent thus prays for the dismissal of the claim.

10. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

11. On 8.7.2010 the following issues had come to be framed by this Court:

1. Whether the termination of the petitioner w.e.f. 1.4.2006 is violative of the principle of Section 25-F of the I.D. Act and against the principle of natural justice, as alleged. If so to what relief the petitioner is entitled to?
2. Whether the petition is not maintainable, as alleged. If so, its effect thereto?
3. Relief.

. .OPP

. .OPR

12. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Partly yes

Issue No.2 : No

Relief. : Allowed partly as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

13. It is primarily not disputed that the services of the petitioner initially came to be disengaged by the respondent on 11.9.1998 for carelessness and negligence in duty resulting in the theft of 369 resin tins in the intervening night of 28.8.1998 and 29.8.1998. Thereafter by virtue of an interim order passed by the Hon'ble Administrative Tribunal the petitioner continued working till 31.3.2006. On the dismissal of the original application, for want of jurisdiction the services of the petitioner was again dispensed with thereafter.

14. It is also not disputed that the FIR no. 392/98 was reported to have been closed as untraced and the investigating agency did not find any evidence showing the complicity of the guard Laxman Singh and the Chowkidars Bihari and Tej Singh (present petitioner). The same is also clear from the Mark-A, the cancellation report produced on record by the petitioner.

15. The Divisional Manager, HP State Forest Corporation, Mandi while appearing as RW1 has categorically admitted that the FIR had been registered against the guard and two chowkidars and FIR has been closed as untraced. He has also admitted that the other Chowkidar Bihari Lal has been re-engaged by the Corporation, though on the orders of the Court.

16. The petitioner has also placed on record a notice dated 11.9.1998 issued vide Ex. PW1/B, whereby his services had been disengaged. The reading of the said letter shows that the services of the petitioner was disengaged in relation to the theft which had occurred on 28.8.1998 in the night. The respondent has categorically gone to hold that the petitioner has been found guilty for gross negligence and as such his service shall come to an end after one month of the said notice.

17. The perusal of the aforesaid notice shows that the action of the respondent disengaging the services of the petitioner was clearly punitive in nature. The disengagement was not ordered by invoking the provisions of the Act but it was rather punitive action based on the alleged negligence of the petitioner. No doubt the respondent Corporation could have resorted to such action, but, in case the services of the petitioner had to be dispensed with as a punitive measure, some inquiry

worth the name had to be conducted against the petitioner, holding him guilty of negligence and carelessness, so attributed to him. However apart from Ex. PW1/B nothing has been placed on record to remotely suggest that some inquiry worth the name had been conducted by the respondent to hold that it was because of his carelessness and negligence that the theft had taken place. On 9.9.1998 the FIR had been registered for the theft of 369 tins and immediately thereafter on 11.9.1998 the services of the petitioner had been dispensed with. Though the respondent has specified in the order disengaging the services of the petitioner that he had been found guilty of negligence but there is nothing contemporaneous on record to show that some inquiry was conducted in this behalf. The Divisional Manager, HP State Forest Corporation while appearing as RW1 has also categorically deposed that before terminating his services no show cause notice was or charge sheet had been issued to the petitioner. Per him it was not required as he was a daily wager. In fact if the respondent Corporation was to simplicitor dispense with the services of the petitioner they should have resorted to the provisions of the Act i.e. by issuing a notice u/s 25-F. It was certainly not done. Once they chose to terminate his services on account of misconduct, even if proceeding under CCS (CCA) Rules were not to be initiated against the petitioner, atleast some inquiry worth the name had to be undertaken. The respondent had to hold some inquiry to fasten culpable liability on the petitioner. There is nothing of that sort on record. Rather the petitioner as per Mark-A had filed a cancellation report holding that no complicity of the guard Laxman Singh and the Chowkidars Bihari Lal and the petitioner was found during the course of investigation.

18. The evidence on record further shows that some departmental inquiry was initiated against Shri Anil Mishra the then Assistant Manager, HPSFC, Shri Todar Mal, Dy. Ranger and Laxman Singh forest guard as is clear from Mark-P2 but there is no evidence forthcoming as what had happened thereafter. Just as the respondent corporation has initiated departmental inquiry against its officials, atleast an opportunity of hearing had to be offered to the petitioner before taking punitive action against him. Admittedly no such endeavour was made by the Corporation. The evidence on record further shows that the forest guard and other chowkidars who had been named in FIR are still working with the respondent Corporation since the action on the petitioner was punitive and was outcome of the same FIR the respondent Corporation has adopted different yardsticks in respect of its employees.

19. Though no evidence has been led by the respondent to remotely show that how the other delinquent had been treated by the respondent Corporation but it has emerged from the cross-examination of the Divisional Manager, HPSFC (RW1) that the forest guard Laxman and Chowkidar Bihari Lal had been imposed penalty of Rs.69000/-, which they have deposed with the Corporation. The DM has also admitted that since the petitioner did not deposit Rs.69000/- he was not kept in service and neither regularized. How and under what circumstances penalty was imposed on the other two employees has not been specified by the respondent Corporation. Without adverting to the aforesaid facet, suffice it to say that the action of the respondent Corporation in terminating the services of the petitioner without any inquiry is against the basic precepts of natural justice. Even if no departmental inquiry was initiated against the petitioner some sort of exercise had to be conducted by the respondent after affording an opportunity to the petitioner to explain his conduct, before dispensing the services of the petitioner. If no proper departmental inquiry some sort of fact finding inquiry had to be conducted by the respondent Corporation to come to a specific conclusion that there had been preponderance of probability to fasten complicity on the petitioner based on some materials on record before the Corporation. There was in fact no material before the Corporation at the relevant time to remotely come to a definite conclusion holding the petitioner guilty of misconduct, atleast on 11.9.1998. The said fact is further substantiated by the cancellation report filed by the investigating agency in the year 1999, absolving the petitioner and his other colleagues from the commission of the said offence, more particularly, seeing to the fact that the other employees are still working with the respondent Corporation. The action of the respondent thus terminating the services of the petitioner on

11.9.1998 and finally w.e.f. 1.4.2006 is illegal and unjust. It is consequently set aside. The respondents are directed to reengage the petitioner. He shall be entitled to seniority and continuity from the date of his illegal disengagement.

20. The Ld. counsel for the petitioner has seriously urged that the petitioner be granted back wages. In this behalf he has placed on reliance on the judgments of Hon'ble Supreme Court in *Novartis India Ltd. vs. State of West Bengal and Others* (2009 LLR 113 and *Jaipur Vidyut Vitran Nigam Ltd. & Ors. vs. Nathu Ram* (2010 LLR 97). Having considered the ratio of the aforesaid judgments this Court is of the considered opinion that seeing to the peculiar circumstances discussed above and more particularly that the other similar situations workmen had been imposed a penalty of Rs. 69,000/-, though without any inquiry, the petitioner is not entitled to any back wages. More so admittedly the Corporation has also incurred pecuniary loss due to the theft which had taken place during the course of his employment. The issue is thus partly decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

21. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

22. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal disengagement, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today the 28th day of November, 2011.

(KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 246/2010

Date of Institution : 30.9.2010

Date of decision : 16.12.2011

Shri Tek Chand S/o Shri Dinu Ram, R/o Village Siul, P.O. Larah, Tehsil Salooni, Distt. Chamba, H.P.

...Petitioner

Versus

The Executive Engineer, HPPWD Division Salooni, Distt. Chamba, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. T.R. Bhardwaj, AR

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the action of the Executive Engineer, HPPWD Division Salooni, Distt. Chamba, H.P. to give break in service to Sh. Tek Chand S/o Shri Dinu Ram, daily wage workman during his service period time and again and finally verbal termination w.e.f. 1.6.2000 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what backwages, service benefits and relief the above named workman is entitled to?”

2. It is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar in December, 1985 and continued working till March, 1987. The respondent thereafter gave illegal breaks to the petitioner that he remained out of employment till June, 1994. The petitioner was re-engaged in July, 1994 and he was again disengaged w.e.f. 1.9.1994 and that too without any notice. The petitioner had filed an O.A. before the Hon’ble Administrative Tribunal and he was ordered to be reengaged and by virtue of an interim order passed by the Hon’ble Tribunal he continued working as such till 9.6.1996. The original application had come to be disposed off by the Hon’ble Tribunal on 21.5.1996.

3. The petitioner was again re-engaged in October, 1996 and disengaged in December, 1996. He again worked with the respondent from May, 1997 till July, 1997. The petitioner again worked with the respondent from October, 1997 to December, 1997. The petitioner was again re-engaged in January, 1999 and he worked till December, 1999. In May, 2000 and from July, 2000 the petitioner was re-engaged and finally disengaged on 1.8.2000. His disengagement on 1.8.2000 was also verbal and without any notice.

4. It is further averred by the petitioner that the Hon’ble Administrative Tribunal while deciding his original application directed that in case any junior to the petitioner have become senior to him by virtue of the interim order passed by the Tribunal, his seniority be not disturbed. However the respondent had disengaged the petitioner with a malafide intention time and again. Even when the petitioner was finally disengaged on 1.8.2000 the respondent had retained persons junior to him namely one Man Singh, Ganesh Dutt, Madho Ram, Nar Singh, Dharmender, Suresh Kumar, Delu, Bhagat Ram, Bhilo, Baiza etc.. The petitioner had approached the respondent for his re-engagement, but to no avail. The action of the respondent is thus stated to be violative of the provisions of Section 25-G of the Industrial Disputes Act (hereinafter referred to as the Act).

5. It is also averred by the petitioner that the respondent had been giving intermittent breaks to the petitioner with a malafide intention, that the petitioner could not complete the criteria of 10 years for regularization.

6. It is further the case of the petitioner that that the respondent did not follow the principle of ‘last come first go’ as such violated the provisions of Section 25-G. Not only this the respondent had also engaged fresh hands after the disengagement of the petitioner and had afforded no opportunity to the petitioner for reemployment. The action of the respondent thus is also stated to be in contravention of the provisions of Section 25-H of the Act. Over and apart his

disengagement without any notice is stated to be violated of the provisions of Section 25-F, too. The petitioner thus claims that he be re-engaged with all consequential benefits.

7. The respondent while controverting the claim has raised preliminary objections that the claim is not maintainable and the petition is hit by the vice of delay and laches and the petitioner has concealed material facts from this Court and as such has no enforceable cause of action, more particularly keeping in view the judgment of the Hon'ble Administrative Tribunal dated 21.5.1996.

8. On merits it is the case of the respondent that the petitioner was engaged in August, 1986. During the period of his engagement the petitioner had worked intermittently, as per his convenience and will. The mandays of the petitioner have been placed on record vide Anneuxre-R-2. It is denied that illegal breaks had been given to the petitioner.

9. It is not denied that the petitioner had filed an original application No.2374/94 before the Hon'ble Administrative Tribunal and the petitioner had been re-engaged in pursuance to the interim order passed by the said Tribunal. It is further averred by the respondent that the Hon'ble Tribunal had returned findings on merits that the petitioner had abandoned job of his own and had gone to the extent of imposing costs of Rs.500/- on the petitioner. Further directing the respondent not to count the engagement of the petitioner in pursuance to the interim order for the purposes of continuous service in terms of Section 25-B of the Act.

10. In addition it is averred by the respondent that after abandoning work in March, 1987 the petitioner reported for work only in July, 1994. The petitioner had not completed 240 days of continuous service in any year, except the year 1995.

11. It is further the case of the respondent that after the pronouncement of judgment by the Hon'ble Administrative Tribunal the petitioner left work at his own will. Thereafter he reported for work in October, 1996. He again left work. The petitioner thereafter worked for 38 days in 1997, 137 days in 1999 and 27 days in the month of May, 2000. After May, 2000 the petitioner never reported for work and permanently abandoned job. The respondent thus prays for the dismissal of the claim.

12. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

13. On 17.9.2011 the following issues had been framed by this Court:

1. Whether the disengagement of the petitioner w.e.f. 1.6.2000 is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

2. Whether the respondent had been given fictional breaks to the petitioner w.e.f. 10.6.1996 till the year 1999, as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

3. Whether the reference is not maintainable, as alleged. If so, to what effect.

. .OPR

4. Whether the reference is hit by the vice of delay and laches, as alleged. If so, to what effect?

. .OPR

5. Relief.

14. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Partly yes
 Issue No.2 : No
 Issue No.3 : No
 Issue No.4 : No
 Relief. : Allowed partly as per the operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

15. No doubt the petitioner had challenged his disengagement in March, 1987 vide O.A. No.2374/94 and the same had been disposed off vide on 21.5.1996 as is clear from Ex. RW1/B but the fact remains as is also clear from Ex. RW1/A, the mandays of the petitioner placed on record by the respondents themselves, the petitioner did work with the respondent till May, 2000. Even after the dismissal of his original application the petitioner was allowed to work by the respondent. In fact the petitioner was engaged by the respondent again in 1997.

16. However, a bare glance on the mandays on record shows that the petitioner has not worked continuously with the respondent even after 1996. In fact after July, 1997 the petitioner did not work till January, 1999. In the preceding 12 months of his alleged disengagement the petitioner has admittedly not put in 240 days. Apparently the question of issuing notice under Section 25-F would thus not come to the rescue of the petitioner.

17. The engagement of the petitioner between July, 1994 till the disposal of the original application dated 21.5.1996 cannot be counted towards his seniority and continuity in view of the orders passed by the Hon'ble Tribunal in O.A. No.2374/94 (Ex. RW1/B). Even after 1996 the petitioner has not completed 240 days in any of the years. By virtue of orders passed by the Hon'ble Tribunal the seniority of the petitioner thus is relegated to July, 1996.

18. As per the respondent the petitioner had abandoned job after 1.6.2000. While, per the petitioner his service had been disengaged without notice. Since the petitioner had not completed 240 days in the preceding 12 months of his alleged disengagement apparently no notice under Section 25-F was required. The respondents have raised the plea of abandonment. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job.

19. Except for the bald statement of the Executive Engineer who has appeared as RW1 there is no contemporaneous material on records to show that the petitioner had abandoned job. The respondent has thus failed to prove the plea of abandonment. It has thus to be inferred that the services of the petitioner was disengaged.

20. No doubt the protection of Section 25-F was not available to the petitioner but admittedly the protection of the mandatory provisions of Section 25-G and 25-H who were still available to the petitioner. Even if he had not completed 240 days in the preceding 12 months of his disengagement the petitioner was entitled to the protection of Section 25-G and 25-H. The seniority list of daily wagers of Salooni Division Ex. D1 shows that many workmen had come to be engaged

for the first time after the year 1997. Even if the seniority of the petitioner is considered after June, 1996 he was admittedly senior to them. In that view of the matter in case the petitioner was to be retrenched the workmen having engaged in the last were to be retrenched first. It was not done in the present case. Not only this Ex. D1 further shows that even after the disengagement of the petitioner in 2000 workmen have been engaged by the respondent. The workmen from serial no.326 to 349 have all been engaged after the disengagement of the petitioner. Admittedly no opportunity was offered to the petitioner at the relevant time for re-engagement. The same is also against the mandate of Section 25-H, which is again mandatory in nature. To this limited extent the disengagement of the petitioner is bad. Consequently the petitioner is directed to be re-engaged. However seeing to the circumstances discussed hereinabove and more particularly the order passed in the original application earlier the petitioner shall be entitled to seniority and continuity from the date fresh hands have been engaged i.e. after his disengagement and particularly after the year 2000. The petitioner shall not be entitled to any back wages. The issue is decided accordingly.

ISSUE NO. 2

21. No conclusive evidence had been led by the petitioner to show that the respondent had been giving fictional breaks to the petitioner. In fact as per evidence on record even after the dismissal of his original application by the Hon'ble Administrative Tribunal the petitioner was re-engaged by the respondent but he has not worked continuously thereafter with the respondent. The perusal of the mandays placed on record by the petitioner Mark-A and Ex. RW1/A placed on record by the respondent show that the petitioner did not work from December, 1997 till January, 1999. It cannot be believed that the petitioner was given fictional breaks for such a long time. Moreover there is no explanation about the absence of the petitioner for such a long period. The evidence on record shows that even after January, 1999 the petitioner was re-engaged by the respondent. Thus it cannot be said that the respondent had been giving fictional breaks to the petitioner during the said interregnum i.e. 10.6.1996 till the year 1999. The issue is accordingly decided against the petitioner.

ISSUE NO. 3

22. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the relief the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

ISSUE NO. 4

23. No doubt the petitioner was terminated in the year, 2000 and the failure report was submitted by the conciliation officer on 5.7.2006. In the interregnum the petitioner raised an industrial dispute. Some time could have been spent in conciliation. There is no evidence as to how the claim was time barred and not maintainable. Therefore it cannot be said that the demand notice was stale. Moreover the provisions of the Limitation Act do not strictly apply to the Industrial Disputes Act. The matter having become stale has not been proved by the respondent, the onus of which was on them. Not only this it is by now well settled that in case a dispute is referred to this Court for determination the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Naginder Kumar vs. HPSEB (CWP No.885/07 decided on 1.11.2007) (2008 (1) SLJ (HP) 425). In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having surveyed various rulings on the point, the Hon'ble High Court of Himachal Pradesh inter alia observed:

“ While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram's case (supra), there was a delay of 12 years. In Ramesh Chand's case (supra) there was a delay of 9 years. In Mohinder Kumar's case (supra), there was a delay of 14 years.....”

Thus it cannot be said that the reference suffers from the vice of delay and laches. The issue is answered accordingly.

RELIEF

24. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity after the year 2000, when fresh hands were engaged by the respondent, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 16th day of December, 2011.

(KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.

Ref No. : 473/2009

Date of Institution : 14.9.2009

Date of decision : 25.11.2011

Shri Tilak Raj S/o Shri Manak Chand, R/o Village Ghissal, P.O. Sach, Tehsil Pangi, District Chamba, H.P.

...Petitioner

Versus

The Executive Engineer, I&PH Division Dalhousie,, District Chamba, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Gaurav Sharma, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Tilak Raj S/o Shri Manak Chand by The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P. w.e.f.2004 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that he was appointed as a beldar by the respondent in the year 1997 in I&PH Pangi at Killar. Thereafter he worked continuously and uninterruptedly till the year 2004, when his services were terminated orally, without any notice, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas his services were disengaged.

4. The petitioner thus contends that his termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of his termination.

5. The petitioner thus seeks his re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections vis-à-vis maintainability and the reference being hit by the vice of delay and laches.

7. On merits it is the case of the respondent that the petitioner had abandoned his job and thereby also lost his seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 15.7.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. 2005 is violative in the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947, as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

2. Whether the petition is not maintainable, as alleged. If so, its effect thereto.

. .OPR

3. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes

Issue No.2 : No

Relief. : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the

provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in September, 2004. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled *State of H.P. vs. Bhatag Ram and Anr.* (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as his own witness has deposed that certain juniors to him were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, he was entitled to the protection of provisions of Section 25-G of the Act and the respondents were duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and has further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled *State of H.P. vs. Prem Lal* 2010 (3) Him. LR 1363 and *State of H.P. & Ors. vs. Chet Ram* (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

ISSUE NO. 2

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

15. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

(KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
 TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 18/2008

Date of Institution : 17.1.2008

Date of decision : 30.11.2011

Shri Udho Ram s/o Shri Dharmoru Ram, r/o Village Mundla Dhar, P.O. Lilli, Tehsil & District Kangra, H.P.

....Petitioner.

Versus

The Conservator of Forests, Working Plan and Settlement, Khalini, Shimla, H.P.

.....Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. R.P. Sharma, adv., and
 Sh. Vijay Kaundal, adv.

For the Respondent. :

Sh. Sanjeev Katoch, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Udho Ram s/o Sh. Dharmoru Ram workman by the Conservator of Forests, Working Plan and Settlement Khalini, Shimla-171001 w.e.f. 01-07-1995 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified ? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to?”

2. It is averred by the petitioner in the statement of claim that he was engaged as driver by the respondent No.3 on 13-9-1994 on daily waged basis. On 8-5-1995 when the petitioner was detailed on vehicle bearing No.HIS-1173 and traveling with the respondent No.3 on an official visit, met with an accident. A truck bearing No. HIB-579 had hit his parked vehicle. As a result his vehicle was damaged and the petitioner has suffered multiple injuries on his person.

3. Consequently a FIR came to be lodged in Police Station Ghumarwin and the petitioner having been admitted in Hospital remained under treatment for 3 months.

4. After having been declared fit to resume duty and armed with a medical fitness certificate the petitioner went to join duty but the respondent No.3 refused to take him back.

5. The services of the petitioner were disengaged without serving any notice or complying with the mandatory provisions of the Industrial Disputes Act. (hereinafter referred to as the Act).

6. It is further averred by the petitioner that the accident had occurred due to negligence of the driver of the other vehicle bearing No. HIB-579 and he was prosecuted by the State of H.P. There was no fault on the part of the petitioner. The petitioner had earlier approached this Court under Section 33-C of the Act but the said petition was not entertained. Thereupon the petitioner had approached the Hon'ble High Court vide CWP No.1134/2007 and as such the claim is not time barred.

7. The petitioner thus claim his reengagement with all consequential benefits.

8. While controverting the claim the respondents has averred that the petitioner had been temporarily engaged as a daily waged driver w.e.f. 13-9-1994 because the regular driver was on leave. Whenever, the regular driver went on leave, an alternate arrangement was made by deploying the petitioner as a stop gap arrangement and as such he could not be termed to be a daily waged appointee. He was engaged by the respondent from 13-9-1994 to 30-11-1994 and again from 12-4-1995 to 30-6-1995 when the regular driver was on leave. An accident dated 8-5-1995 is not denied by the respondent. The petitioner is further stated to have received an amount of Rs. 2,00,000.00 in pursuance to a claim made by the petitioner before the Motor Accident Claims Tribunal. The petitioner is stated to have not worked with the department continuously, rather, he was engaged temporarily during the leave period of the regular driver. The respondents thus pray for the dismissal of the reference.

9. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

10. I notice that on 16-2-2009 the following issues came to be framed by my Ld. predecessor.

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to?
... OPP.
2. Whether the petitioner was engaged as driver by way of stop-gap arrangement for specific periods of time, as alleged. If so, to what effect?
...OPR.
3. Relief.

11. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : No

Issue No.2 : No

Relief. : The reference is dismissed. However, the respondents should abide by the provision of the Sec.25-H of the Act, if any daily wager is engaged.

REASONS FOR FINDINGS**ISSUE No. 1 & 2**

12. Both the issues are being discussed together as they are correlated and intermingled.

13. Though the respondent claim that the petitioner had been engaged as a stop gap arrangement, primarily as a leave reserve driver, but nothing has been placed on record to substantiate the said plea. No documents has been placed on record to show that the petitioner had been engaged as a leave reserve, in the absence of a regular driver. Except for the bald statement of the Chief Conservator of Forest Sh. Chandresh Sharma who has appeared as RW1 there is no co-terminus documents to prove the same.

14. However, admittedly the petitioner has only worked with the respondent from 13-4-1994 to 30-11-1994 and 12-4-1995 to 30-6-1995. Atleast one thing is clear that the petitioner had not unfortunately completed 240 days in the preceding 12 months of his disengagement. The protection of Sec. 25-F thus was not available to the petitioner. It is again true that the petitioner had unfortunately met with an accident during the course of his employment with the respondent. Since the protection of Sec. 25-F is not available to the petitioner no fault can be found with the disengagement of the petitioner. The petitioner could have invoked the protection of Sec.25-Gand 25-H and the condition of not having completed 240 days would not have precluded the petitioner from seeking the protection of the aforesaid provisions, but unfortunately again the petitioner has neither pleaded nor proved such any infraction by the respondent. Thus what emerges from theevidence on record is that though the petitioner was not engaged as a stopgap arrangement, still, however his disengagement cannot be faulted. None-the-less the respondent shall abide by the provisions of the Section 25-H of the Industrial Disputes Act i.e. afford opportunity of reengagement to the petitioner as and when fresh hands are engaged by them. Even if thepetitioner had not completed 240 days he shall be entitled to protection ofSection 25-H of the Act and the respondent shall offer him opportunity ofreengagement as and when daily wagers are engaged by the respondent.

15. Both the issues are thus accordingly decided in favour of the respondent and against the petitioner.

RELIEF

16. For the reasons discussed hereinabove supra, I do not find any merit in the claim and the same is dismissed. However, the respondent shall offer opportunity to the petitioner as and when daily wagers are engaged, as per the provision of Sec. 25-H of the Industrial Disputes Act. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of Nov., 2011.

(KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 415/2009

Date of Institution : 28.8.2009

Date of decision : 25.11.2011

Shri Uttam Chand S/o Shri Hari Kishan, R/o Village & P.O. Hillor, Tehsil Pangi, District Chamba, H.P.

...Petitioner

Versus

The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Gaurav Sharma, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Ld. Dy.D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Uttam Chand S/o Shri Hari Kishan by The Executive Engineer, I&PH Division Killar, Tehsil Pangi, District Chamba, H.P. w.e.f.2005 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The petitioner has averred in the statement of claim that he was appointed as a beldar by the respondent in the year 1996 in I&PH Pangi at Killar. Thereafter he worked continuously and uninterruptedly till the year 2005, when his services were terminated orally, without any notice, despite availability of work and funds.

3. It is further averred by the petitioner that certain persons who were junior to the petitioner were continued whereas his services were disengaged.

4. The petitioner thus contends that his termination is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner has completed more than 160 days in all the calendar years and in the preceding 12 months of his termination.

5. The petitioner thus seeks his re-engagement with all consequential benefits.

6. The respondents while contesting the claim having inter alia raised the preliminary objections vis-à-vis maintainability and the reference being hit by the vice of delay and laches.

7. On merits it is the case of the respondent that the petitioner had abandoned his job and thereby also lost his seniority in this process. The persons named in the statement of claim are stated to be senior to the petitioner and since they had completed requisite 160 days in all calendar years, they have been regularized, as per their seniority.

8. Rejoinder has not filed. On 15.7.2011 the following issues were framed:

1. Whether the termination of the petitioner w.e.f. 2005 is violative in the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947, as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

2. Whether the petition is not maintainable, as alleged. If so, its effect thereto.

. .OPR

3. Relief.

9. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No.1 : Yes

Issue No.2 : No

Relief. : Partly allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUE No. 1

10. The simple case set up by the petitioner is that the respondent had infringed the provisions of Section 25-F, 25-G and 25-H of the Act while terminating his services. Per contra it is the case of the respondent that the petitioner had himself abandoned job. The infraction of the provisions of Section 25-G and 25-H of the Act is denied as the persons named in the statement of claim are stated to be senior to the petitioner.

11. To support the plea of abandonment the respondents have examined the Executive Engineer Sh. M.K. Minhas, who has appeared as RW1. He has deposed that the petitioner had himself abandoned job in October, 2005. There is nothing on record to remotely suggest that any notice was served on the petitioner for having willfully and unauthorisedly absented from job. Nor is there any documentary evidence to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Apart from the bald statement of the Executive Engineer there is nothing to show that the petitioner had in fact abandoned job. By now it is well settled that the abandonment has to be established by leading evidence. It is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled State of H.P. vs. Bhatag Ram and Anr. (2007 LHLJ 903). Nothing has been placed on record to prove the plea so raised by the respondent. The respondents have led no evidence to prove that the petitioner had abandoned job. The mandays of the petitioner has been placed on record vide Ex. RW1/A.

12. The petitioner while appearing as his own witness has deposed that certain juniors to him were retained by the respondent. The respondents though have denied that the juniors were retained but no seniority list has been placed on record to dispel the claim of the petitioner. Even if the petitioner had not completed the requisite number of days, he was entitled to the protection of provisions of Section 25-G of the Act and the respondents were duty bound to have maintained the seniority list of all workmen whether they had completed the requisite number of days or not. Since the respondents have failed to prove the plea of abandonment and have further not placed any evidence worth the name that juniors to the petitioner were not retained it is to be presumed that the termination of the petitioner was not consonance with the provisions of Section 25-G and as such is bad in the eyes of law. By now it is fairly well settled that for invoking the protection of the provisions of Section 25-G and 25-H the requirement of having completed 240 days is not a

condition precedent. In this behalf support can be ably elicited by the judgments of our own Hon'ble High Court titled as State of H.P. vs. Prem Lal 2010 (3) Him. LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No.3887/2011 decided on 3.6.2011).

13. Though in the present case neither the petitioner nor the respondents placed on record the seniority list of workmen but the consolidated seniority list of the division which has been placed in connected matters show that the respondent had engaged many workmen between the year 2006 and 2009. Even while engaging people in the year 2006 and 2009 the respondents should have first offered opportunity to the petitioner to afford himself for re-employment, which was also not done. The termination of the petitioner is thus illegal being against the mandatory provisions of Section 25-G and 25-H of the Act. Consequently the termination of the petitioner is set aside. He is ordered to be re-engaged forthwith. He shall be entitled to seniority and continuity from the date of his illegal termination. Seeing to the peculiar circumstances of the case and more so the fact that the petitioner has not worked with the respondent department during the interregnum, no back wages are being ordered in favour of the petitioner.

ISSUE NO. 2

14. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. Even otherwise nothing has been brought to my notice, as to why the reference is not maintainable. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

RELIEF

15. For the foregoing reasons discussed hereinabove, the reference is allowed partly. The termination of the petitioner is set aside. The respondents are directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity from the date of his illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today the 25th day of November, 2011.

(KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

**IN THE COURT OF KR. CHIRAG BHANU SINGH PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, DHARAMSHALA, H.P.**

Ref No. : 185/2007

Date of Institution : 1.11.2007

Date of decision : 06.01.2012

1. Shri Yan Singh S/o Shri Palas Ram, R/o Village Peasani, P.O. Piplage, Tehsil and District Kullu, H.P.
2. Shri Teja Singh S/o Shri Mani Ram, R/o Village Peasani, P.O. Piplage, Tehsil and District Kullu, H.P.

...Petitioners

Versus

Executive Engineer, H.P.S.E.B. Division, Kullu, District Kullu, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Bimal Sharma, Adv.

For the Respondent :

Sh. Abhisekh Lakhanpal, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of S/Shri Yan Singh S/o Shri Palas Ram, Teja Singh S/o Shri Mani Ram workmen by the Executive Engineer, H.P.S.E.B. Division, Kulu, District Kullu, H.P. w.e.f. 25.9.1998 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workmen are entitled to?”

2. The short and simple case set up by the petitioners in the statement of claim is that the petitioner Yan Singh was engaged as a beldar w.e.f. 1.1.1986 and his services were terminated w.e.f. 25.6.1999 after serving a notice dated 5.6.1999 whereas petitioner Sh. Teja Singh was engaged on 26.1.1992 and his services were also disengaged after issuing a similar notice w.e.f. 25.6.1999. Both the petitioners had filed original applications before the Hon'ble Administrative Tribunal which were dismissed for want of jurisdiction, with liberty to approach the competent forum.

3. It is further averred by the petitioners that while disengaging their services person junior to them were retained and one of them being Vinod kumar S/o Shri Narain Dass. Certain other juniors were also retained by the respondent and as such they had violated the statutory principle of 'last come first go' as envisaged under Section 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and the Board had also engaged fresh hands after the disengagement of the petitioners and as such violated the provisions of Section 25-H of the Act. The petitioner thus claims their re-engagement with all consequential benefits.

4. While contesting the claim the respondents have inter alia raised the preliminary objections vis-à-vis maintainability, cause of action, estoppel and the petition being bad for non joinder and mis joinder of necessary parties.

5. On merits while contesting the claim of the petitioner the respondents have averred that petitioner Yan Chand worked as a daily wager w.e.f. 26.9.1988 till 25.9.1998 and thereafter left the job of his own. It is denied that the services of the petitioner was terminated by the respondent. In respect of Teja Singh it is averred that he was engaged on 26.1.1992 as daily wager and thereafter abandoned job w.e.f. 25.9.1998 of his own. It is denied that the persons junior to the petitioners were retained by the Board. Per the respondents the petitioner had themselves left job and their services were never terminated. The respondent thus prays for the dismissal of the claim.

6. While filing the rejoinder the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

7. I notice that on 16.6.2009 the following issues had came to be framed by my Ld. Predecessor:

1. Whether the services of the petitioners were terminated by the respondent w.e.f. 25.9.1998, as alleged.

..OPP

2. If the above issue 1 is proved, whether the termination of services of the petitioners by the respondent is unlawful. If so, what relief the petitioners are entitled to?

..OPP

3. Relief.

8. Having considered the pleadings, evidence and other attendant materials placed on record; my findings on the issues framed above are thus:

Issue No. 1 : Yes

Issue No.2 : Petitioners are directed to be re-engaged.

Relief : Allowed as per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2

9. Both the issues are being taken up together for discussion as they are correlated and intermingled.

10. The petitioner Yan Singh has worked with the respondent w.e.f. 1.1.1986 till 25.6.1999 and so as petitioner Teja Singh worked with the respondent Board w.e.f. 26.1.1992 till 25.6.1999. The said fact is further corroborated from the mandays of the petitioners placed on record vide their mandays Ex. RW1/B and Ex. RW1/C.

11. Though the respondents have specifically pleaded that the petitioners had abandoned job of their own will and the same is the defence propounded by Shri N.K. Gupta, Assistant Engineer, HPSEB who has appeared as RW1 but he has further admitted in his cross-examination that petitioner Teja Singh had been issued a notice dated 5.6.1999 vide Ex. P1 and even a similar notice had been issued to petitioner Yan Singh. Though the purported notice was not in compliance with the provisions of Section 25-F. Even otherwise the issuance of notice on 25.6.1999 totally belies and falsifies the plea of abandonment w.e.f. 25.9.1998, so propounded by the respondent. Apparently the respondent had issued notice to the petitioners asking them not reported for duty after 25.6.1999. Even assuming that the petitioners had not completed 240 days in the preceding 12 months of their disengagement the respondents were duty bound to have abided by the principle of 'last come first go' which is mandatory in nature and in this behalf even the requirement of having completed 240 days is not a condition precedent. In this behalf support can ably be drawn by the judgments of the Hon'ble Supreme Court in Central Bank of India vs. S. Satayam, 1996 (5) SCC 419 and Harjinder Singh vs. Punjab State Ware House Corporation, 2010 (3) SCC 192 and our own Hon'ble High Court in State of H.P. vs. Prem Lal 2010 (3) Him LR 1363 and State of H.P. & Ors. vs. Chet Ram (CWP No. 3887/2011 decided on 3.6.2011).

12. The plea of abandonment so raised by the respondent is falsified by the admission of the RW1 that notice Ex. P1 had been issued to petitioner Teja Singh and even a similar notice had been issued to petitioner Yan Singh. It is thus clear that the petitioners had not abandoned job on 25.9.198. Rather their services had been disengaged w.e.f. 25.6.1999.

13. The respondents have placed on record a seniority list of Division vide Ex. RW1/D. It categorically shows that many workmen have been engaged after the petitioners. If the respondents were to resort to retrenchment or disengage the petitioners even for want of work and funds they

were duty bound to have followed the principle of 'last come first go'. It was certainly not followed. As discussed hereinabove supra the respondents were duty bound to have retrenched workmen strictly on the principle of 'last come first go' and that too even if the petitioners had not completed 240 days in the preceding 12 months of their disengagement. Their disengagement thus is palpably illegal and against the statutory provisions of Section 25-G of the Act. Consequently the disengagement of the petitioners is set aside. They are directed to be re-engaged forthwith. They shall be entitled to seniority and continuity from the date of their illegal disengagement. In the peculiar facts and circumstances of the case they shall not be entitled to any back wages. The issues are decided against the respondents and in favour of the petitioners.

RELIEF

14. For all the aforesaid reasons discussed above the disengagement of the petitioners is set aside and quashed. The respondents are directed to re-engage the petitioners forthwith. The petitioners shall be entitled to continuity and seniority from the date of their illegal termination, though except back wages. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the officialgazette and the file after completion consigned to the record room.

Announced in the open Court today this 6th day of January, 2012.

(KR. CHIRAG BHANU SINGH,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Dharamshala.

मुद्रण एवं लेखन सामग्री विभाग

अधिसूचना

शिमला-2, 14 मार्च, 2012

संख्या : मुद्रण-(ई) 3-17/2004.—राज्यपाल, हिमाचल प्रदेश, मुद्रण एवं लेखन सामग्री विभाग में विभागाध्यक्ष के साथ वरिष्ठ वेतनमान आशुलिपिक (₹ 10300-34800 + 3800 ग्रेड पे) के पद को निजी सहायक (₹ 10300-34800 + 4200/-ग्रेड पे) के पद में अपग्रेड करने की स्वीकृति आगामी प्रभाव से इस शर्त पर प्रदान करते हैं कि विभाग समस्त अन्य औपचारिकताएं पूर्ण करे ।

यह स्वीकृति वित्त विभाग की सहमति के उपरान्त उनके यू0यो0 संख्या : 52032338 दिनांक 16-1-2012 द्वारा जारी की जाती है ।

आदेश द्वारा
हस्ताक्षरित /—
प्रधान सचिव (मुद्रण एवं लेखन)।

ब अदालत श्री कर्म चन्द, नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला, जिला कांगड़ा,
हिमाचल प्रदेश

मुकद्दमा नं० 10/NT/12/ना० तहसीलदार एवं कार्यकारी दण्डाधिकारी

साम्बरी राम

बनाम

आम जनता

विषय.—प्रार्थना—पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

श्री साम्बरी राम पुत्र श्री नौधा राम, निवासी सुंकड़ खास, मौजा सुंकड़, तहसील धर्मशाला, जिला कांगड़ा ने इस अदालत में शपथ—पत्र सहित मुकद्दमा दायर किया है कि उसकी पत्नी श्रीमती रेशा देवी की मृत्यु तिथि 18-7-2010 है परन्तु ग्राम पंचायत सुंकड़ में उक्त तारीख पंजीकृत नहीं है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस द्वारा समस्त जनता को तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त मृत्यु पंजीकृत किये जाने बारे कोई एतराज हो तो वह हमारी अदालत में दिनांक 10-4-2012 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ—पत्र मृत्यु तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जाएंगे।

आज दिनांक 24-2-2012 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

कर्म चन्द,
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत श्री कर्म चन्द, नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला, जिला कांगड़ा,
हिमाचल प्रदेश

मुकद्दमा नं० 2/NT/12/ना० तहसीलदार एवं कार्यकारी दण्डाधिकारी

Mrs.Tsering Dolma

बनाम

आम जनता

विषय.—प्रार्थना—पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

श्री Mrs.Tsering Dolma wife of Tsawang Gyaltsen Ralatsang, r/o Upper T.C.V. School, Dharamshala Cantt, तहसील धर्मशाला, जिला कांगड़ा ने इस अदालत में शपथ—पत्र सहित मुकद्दमा दायर किया है कि उसकी पुत्री Nagwang Dolma की जन्म तिथि 28-6-1997 है परन्तु M.C. Dharamshala में उक्त तारीख पंजीकृत नहीं है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस द्वारा समस्त जनता को तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त जन्म तिथि पंजीकृत किये जाने बारे कोई एतराज हो तो वह हमारी अदालत में दिनांक 13-4-2012 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ—पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जाएंगे।

आज दिनांक 28-2-2012 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

कर्म चन्द,
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत श्री कर्म चन्द, नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला, जिला कांगड़ा,
हिमाचल प्रदेश

मुकद्दमा नं० 86/NT/ना० तहसीलदार एवं कार्यकारी दण्डाधिकारी

मुरलीधर

बनाम

आम जनता

विषय.—प्रार्थना—पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

श्री मुरलीधर पुत्र श्री रावण, निवासी लाझणी, मौजा घोरोह, तहसील धर्मशाला, जिला कांगड़ा ने इस अदालत में शपथ—पत्र सहित मुकद्दमा दायर किया है कि उसके पिता श्री रावण की मृत्यु तिथि 22-10-1972 है परन्तु ग्राम पंचायत घोरोह में उक्त तारीख पंजीकृत नहीं है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस द्वारा समस्त जनता को तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त मृत्यु तिथि पंजीकृत किये जाने बारे कोई एतराज हो तो वह हमारी अदालत में दिनांक 12-4-2012 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ—पत्र मृत्यु तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जाएंगे।

आज दिनांक 27-2-2012 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

कर्म चन्द,
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत श्री कर्म चन्द, नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला, जिला कांगड़ा,
हिमाचल प्रदेश

मुकद्दमा नं० 11/NT/12/ना० तहसीलदार एवं कार्यकारी दण्डाधिकारी

Mrs. Youdon

बनाम

आम जनता

विषय.—प्रार्थना—पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

Mrs. Youdon daughter of Shri Dorjee w/o Shri Ngawang, r/o Yongling School Jogiwara, P.O. Mcleodganj, Dharamshala, तहसील धर्मशाला, जिला कांगड़ा ने इस अदालत में शपथ—पत्र सहित मुकद्दमा दायर किया है कि उसकी पुत्री Tenzin Deden की जन्म तिथि 1-8-2000 है परन्तु M.C. Dharamshala में उक्त तारीख पंजीकृत नहीं है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस द्वारा समस्त जनता को तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि यदि किसी को उपरोक्त जन्म पंजीकृत किये जाने बारे कोई एतराज हो तो वह हमारी अदालत में दिनांक 10-4-2012 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ—पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जाएंगे।

आज दिनांक 29-2-2012 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

कर्म चन्द,
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा, हिमाचल प्रदेश।

**In the Court of Naib Tehsildar-cum-Executive Magistrate, Dharamshala, District Kangra,
Himachal Pradesh**

Case No. : 88/NT.

1. Shri Rajeev Mankotia s/o Shri Sartaj Singh, resident of Maned, P.O. Chetru, Tehsil Dharamshala.
2. Smt. Anita Katoch d/o Shri Milap Chand r/o Bari, Tehsil Jaisinghpur . . . *Applicants.*

Versus

1. General Public, 2. The Registrar of Marriages.

Subject.—Registration of marriage under section 8 (4) of the H. P. Registration of Marriages Act, 1996 (Act No. 21 of 1997).

PUBLIC NOTICE :

Whereas the above named applicants have made an application under section 8 (4) of the Himachal Pradesh Registration of Marriages Act, 1996 alongwith an affidavit stating therein that they have solemnized their marriage on 26-11-2007 at Maned but has not been found entered in the records of the Registrar of Marriages, G. P. Maned;

And whereas, they have also stated that they were not aware of the laws for the registration of marriage with the Registrar of marriages and now, therefore, necessary order for the registration of their marriage be passed so that their marriage is registered by the concerned authority.

Now, therefore, objections are invited from the general public that if anyone has any objection regarding the registration of the marriage of the above named applicants, they should appear before the court of undersigned on 12-4-2012 at Tehsil Office Dharamshala at 10.00 A. M. either personally or through their authorized agent.

In the event of their failure to do so, orders shall be passed *ex-parte* for the registration of marriage without affording any further opportunity of being heard.

Issued under my hand and seal of the Court on this 27-2-2012.

Seal.

Sd/-

*Naib Tehsildar-cum-Executive Magistrate,
Dharamshala, District Kangra, Himachal Pradesh.*

ब अदालत कार्यकारी दण्डाधिकारी, बैजनाथ, जिला कांगड़ा, हिमाचल प्रदेश

शुशील कुमार पुत्र श्री पठानू राम, निवासी गांव रक्कड़ भेड़ी, तहसील बैजनाथ, जिला कांगड़ा, हिमाचल प्रदेश

बनाम

आम जनता

प्रार्थना—पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

शुशील कुमार पुत्र श्री पठानू राम, निवासी गांव रक्कड़ भेड़ी, तहसील बैजनाथ, जिला कांगड़ा, हिमाचल प्रदेश ने इस अदालत में प्रार्थना-पत्र गुजारा है कि उसके पुत्र राहुल एस शर्मिली का जन्म दिनांक 20-7-1994 को मुहाल रक्कड़ भेड़ी में हुआ था परन्तु इस बारे पंचायत के रिकार्ड में पंजीकरण नहीं करवाया जा सका, अब पंजीकरण करने के आदेश दिए जाएं।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण के बारे कोई उजर या एतराज हो तो वह दिनांक 30-6-2012 को सुबह 10.00 बजे इस न्यायालय में असातन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त जन्म का पंजीकरण करने के आदेश दे दिए जाएंगे उसके उपरान्त कोई एतराज न सुना जाएगा।

आज दिनांक 228-2-2012 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/-
कार्यकारी दण्डाधिकारी,
बैजनाथ, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत श्री नरेश कुमार, तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी, ज्वाली, जिला कांगड़ा,
हिमाचल प्रदेश

तारीख पेशी : 17-4-2012.

1. प्रमोद सिंह पुत्र श्री संसार सिंह, 2. पियूंगला देवी पत्नी स्व० श्री प्यार सिंह, महाल मंगल, मौजा सियूहणी, तहसील ज्वाली . . वादी।

बनाम

1. तुलसी राम, 2. हरी सिंह, 3. जय सिंह, 4. बुधी सिंह पुत्रान श्री साहवनू उर्फ साहब सिंह, 5. सोभा देवी, 6. सुभद्रो देवी, 7. सुनीता देवी पुत्रियां, 8. अमर सिंह, 9. अमी चन्द, 10. राजेन्द्र सिंह, 11. शाम सिंह पुत्र गुरदित्ता, महाल मंगल, मौजा सियूहणी, तहसील ज्वाली . . प्रतिवादी।

प्रार्थी प्रमोद सिंह ने प्रार्थना-पत्र बाबत तकसीम इस कार्यालय में गुजारा है लेकिन निम्नलिखित जो ऊपर दर्शाए गए हैं, को साधारण तरीके से इतलाह न हो पा रही है।

अतः सर्वसाधारण को इस इशतहार द्वारा सूचित किया जाता है कि यदि किसी को खाता नं० 13, खतौनी नं० 29 ता 33, खसरा कित्ता 6, रकबा तादादी 0-24-27 HM टीका मंगल, मौजा सियूहणी, तहसील ज्वाली की तकसीम इस न्यायालय में चल रही है, के बारे में उजर व एतराज हो तो वह दिनांक 17-4-2012 को अदालत हजा में हाजिर होकर एतराज प्रस्तुत कर सकते हैं अन्यथा प्रार्थना-पत्र तकसीम स्वीकार कर लिया जाएगा।

आज दिनांक 24-2-2012 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

नरेश कुमार,
तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
ज्वाली, जिला कांगड़ा, हिमाचल प्रदेश।

